

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 169.

THE UNITED STATES, APPELLANT,

VS.

JOSÉ ISABEL MARTINEZ ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

FILED OCTOBER 2, 1900.

(17031.)

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UNITED STATES OF AMERICA,
Territory of New Mexico:

It remembered that heretofore, to wit, on the 23rd day of April, 1900, Jose Isabel Martinez et al. by their attorney, George Hillard, filed in the office of the clerk of the Court of Private Land Claims, in the city of Santa Fe, in the Territory of New Mexico, a petition in which said Jose Isabel Martinez and others are plaintiffs, and the United States are defendant, said petition being as follows, to wit:

United States Court of Private Land Claims, sitting at Santa Fe,
 N. M., April session, 1900.

ISABEL MARTINEZ ET AL. and G. Hill Howard, <i>vs.</i> UNITED STATES.	}	No. 140. In re Juan Jose Lobato grant. Petition.
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The honorable Court of Private Land Claims:

Come now your petitioners respectfully representing and showing that on the 4th day of December, A. D. 1893, that certain land grant known as and called the "Juan Jose Lobato" was by decree of this honorable court finally confirmed as a complete, perfect, and subsistent grant to Jose Ysabel Martinez and his co-petitioners for the confirmation of same;

that the official survey of said grant under the aforesaid decree was, and all due proceedings first had and made, confirmed by this court on the 9th day of October, A. D. 1895;

that on the 31st day of December, A. D. 1893, the said Jose Ysabel Martinez and his said co-confirmees of the said grant conveyed an undivided one-half of said grant unto your petitioner G. Hill Howard, as is shown by Exhibit B, filed herewith;

that the several parcels of land in the aggregate amounting to 2,056 acres, and as set forth, described, and shown in and by Exhibit A, filed with and made part hereof, were so disposed of, granted, and patented by the United States to the persons in said exhibit named and as therein stated;

That the said lands so granted and patented lie wholly within the boundaries of the said Lobato grant so finally confirmed and surveyed as hereinbefore set forth, and diminish said grant of Lobato to the extent of the lands so sold and patented by the United States.

Your petitioners further allege and show, that the value of the said lands so sold, granted, and patented by the United States is over one dollar and twenty-five cents per acre, they being among the most valuable portions of the said Lobato grant, for the reason that they contain flowing streams for irrigation and springs for the watering of stock; that the value thereof is worth more than \$1.25 per acre for stock purposes alone. Therefore your petitioners respectfully pray this honorable court will interfere into the matter of this petition and render its judgment therein in favor of petitioners against the United States for the value of said lands within the said grant so sold, disposed of, granted, and patented by

the United States, as hereinbefore said, or as the court, upon investigation, may find to be proper in the premises;

And your petitioners further pray that this honorable court will, in and by its decree in the premises, provide that one-half of the amount found due petitioners by the United States in the premises be a charge upon the Treasury of the United States in favor of George Hill Howard and the remaining half of the said amount so found due petitioners be and constitute a charge in favor of Jose Isabel Martinez for himself and in trust for his said co-confirmees of, in, and to the said grant, or that the whole of said judgment be made a charge upon the said Treasury in favor of said George Hill Howard directly, or in his, the said
4 Howard's, favor, for himself and in trust for the said Jose Isabel Martinez and his co-confirmees of the said grant, their heirs or assigns.

And your petitioners will ever pray.

JOSE YSABEL MARTINEZ,

And the other Confirmees of the Juan Jose Lobato Grant.

By GEORGE HILL HOWARD,

Their Solicitor and Attorney in Fact.

GEORGE HILL HOWARD,

In Propria Persona.

(Endorsement :) No. 140. U. S. Land Court. Jose Ysabel Martinez et al. and George Hill Howard vs. United States. In re Juan Jose Lobato grant, No. 140. Petition for reimbursement of lands sold by United States. Filed April 23, 1900. James H. Reeder, clerk.

- 5 Exh. A.—No. 140. U. S. Court Private Land Claims. Jose Ysabel Martinez et al. *vs.* United States. Filed in the office of the clerk, Court of Private Land Claims, April 23, 1900. Jas. H. Reeder, clerk, by I. L. Chaves, deputy.

Entries within the Juan

Date of entry.	Number of home- stead.	Name.	No. F. C.	Date of final certificate.
January 27, 1888	2972	Jose Pablo Jaramillo	1940	February 15, 1893
" 14, 1893	4076	Jose Pablo Jaramillo	1940	February 15, 1893
November 21, 1887	2926	Epifanio Jaramillo	1872	September 19, 1892
November 21, 1887	2925	Bartolo Valdes	1807	May 23, 1892
November 21, 1887	2927	Jose Arcadio Garcia	1929	February 15, 1893
July 27, 1883	1985	Tomas Martinez	1066	October 19, 1883
February 5, 1883	1905	Pedro y Jaramillo	1883	October 13, 1883
July 7, 1883	1941	Jose Romulo Martinez	1065	October 10, 1883
July 11, 1883	1949	Sixto Chaves	1085	October 19, 1883
July 11, 1883	1948	Francisco Jaramillo	1067	October 10, 1883
July 27, 1883	1986	Vicente Vasques	1071	October 10, 1883
July 28, 1883	1989	Juan A. Alire	1072	October 10, 1883
July 10, 1883	1944	Martin Lopez	1084	October 19, 1883
July 27, 1883	1988	Viterbo Archuleta	1070	October 10, 1883
August 23, 1888	3169	Diego Gonzales	Unperfected	

José Lobato grant.

Tract.	Purchased.			Quantity.		Date of patent.	Fees.		Commissions.	
	No. of section.	No. of township.	No. of range.	Acres.	00ths.		Dollars.	Cents.	Dollars.	Cents.
E 1/2 SE 1/4	6	21 N ..	6 E ...	80	.....	May 17, 1893				
W 1/2 SW 1/4	6	21 N ..	6 E ...	80	.....	" " "			
N 1/2 NW 1/4	18	21 N ..	6 E ...							
SE 1/4 SW 1/4, SW 1/4 SE 1/4	7	" "	" "	156	82	Jan'y 13, 1893				
SE 1/4 NW 1/4, SW 1/4 NE 1/4	18	21 N ..	6 E ...							
NW 1/4 SE 1/4, NE 1/4 SW 1/4	"	" "	" "	160	.....	Sept. 2, 1898				
NW 1/4 NW 1/4	21	21 N ..	6 E ...							
NE 1/4 NE 1/4	20	" "	" "	160	.....	May 17, 1893				
S 1/2 SE 1/4	17	" "	" "							
Lots 1 and 2	3	23 N ..	7 E ...	158	93	Feb'y 25, 1885				
S 1/2 SE 1/4	34	24 N ..	7 E ...							
Lots 3 and 4	3	24 N ..	7 E ...	150	37	Feb'y 25, 1885				
SE 1/4 NW 1/4, SW 1/4 NE 1/4	"	" "	" "	160	.....	" 25, 1885				
SW 1/4	3	24 N ..	7 E ...	150	61	Feb'y 25, 1885				
SW 1/4 NW 1/4	3	24 N ..	7 E ...	160	.....	Feb'y 25, 1885				
Lots 1, 2, SE 1/4 NE 1/4	4	24 N ..	7 E ...	160	.....	Feb'y 25, 1885				
SE 1/4 NE 1/4	19	25 N ..	7 E ...	160	.....	Feb'y 25, 1885				
NW 1/4 NE 1/4	18	" "	" "	160	.....	Feb'y 25, 1885				
SW 1/4 SE 1/4, W 1/2 SE 1/4	19	25 N ..	7 E ...	160	.....	Feb'y 25, 1885				
NW 1/4 NE 1/4	30	" "	" "	160	.....	Feb'y 25, 1885				
E 1/2 NE 1/4	30	25 N ..	7 E ...	160	.....	Feb'y 25, 1885				
E 1/2 SE 1/4	19	" "	" "	160	.....	" 25, 1885				
N 1/2 SW 1/4, S 1/2 NW 1/4	32	25 N ..	7 E ...	160	.....				
				2,056	73					
E 1/2 NW 1/4, E 1/2 SW 1/4	21	25 N ..	7 E ...	160	.....				

Unperfected.

U. S. LAND OFFICE, SANTA FE, N. M., April 23, 1900.

We certify that the dates, numbers, and land descriptions, names of entrymen, numbers and dates of final certificates, and dates of patents shown by the above record of homestead entries, located within the exterior limits of the Juan Jose Lobato grant, are correct and true, in accordance with the records, plats, and files of this office.

MANUEL R. OTERO, *Register.*
E. F. HOBART, *Receiver.*

6 And be it further remembered that thereafter, to wit, on the 26th day of April, A. D. 1900, there was filed in the office of the clerk an answer, which answer is in the words and figures following, to wit:

7 In the Court of Private Land Claims, Santa Fe district,

JOSE ISABEL MARTINEZ ET AL.	}	Juan Jose Lobato grant,
and George Hill Howard		
<i>vs.</i>		
UNITED STATES.		No. 140.
In		
JOSE ISABEL MARTINEZ ET AL.	}	Juan Jose Lobato grant.
<i>vs.</i>		
UNITED STATES.		

Answer.

Comes now the United States by its attorney, and for answer and plea to the allegations and statements made in the petition of Jose Isabel Martinez and George Hill Howard against the United States, filed in the case of Jose Isabel Martinez et al, *vs.* United States, No. 140 on the docket of this court, on the 23rd day of April, 1900, in which last said cause the plaintiffs sued as the heirs at law and legal representatives of Juan Jose Lobato, and prayed the confirmation of what is commonly known and called the "Juan Jose Lobato" grant, situate in the county of Rio Arriba, Territory of New Mexico, says: It is true that, on the 4th day of December, A. D. 1893, the Court of Private Land Claims did confirm, as a complete and perfect claim, the said Juan Jose Lobato grant; but it is not true, as alleged, that said confirmation was made unto Jose Isabel Martinez and his copetitioners, but that the said decree of confirmation, entered on the 4th day of December, 1893, was entered in the name of Juan Jose Lobato, his heirs, assigns, and legal

8 representatives.

Further answering, defendant says it is true that the official plat of the survey of said grant, made under and in execution of the decree of confirmation, was approved by this court on the 19th day of October, 1895, and said approval entered of record and duly endorsed on said plat, and that the same was thereafter duly transmitted to the Commissioner of the General Land Office, as provided by law, and is not now within the control or jurisdiction of this court.

Further answering, defendant says it has no knowledge or information sufficient to enable it to form a belief as to whether, on the 31st day of December, 1893, the said Jose Isabel Martinez and his coplaintiffs conveyed an undivided one-half interest in said grant unto George Hill Howard, but if the same be true it is immaterial.

Further answering, defendant says it has no knowledge or information sufficient to enable it to form a belief as to whether there were sold, disposed of, granted and patented by the United States to other persons the aggregate area of 2,056.73 acres, lying within the outboundaries of said claim; and it has no knowledge or information sufficient to enable it to

form a belief as to whether said lands, so alleged to have been patented and disposed of by the United States, are reasonably worth the sum of \$1.25 per acre.

Further answering, defendant, the United States, says that in and by said original petition, filed February 28, 1893, by José Isabel Martinez and others against the United States, it was alleged and charged in paragraph 11th thereof "that there are no adverse holders, possessors, or claimants of or to any portion of said tract, and that the same does not conflict, in whole or in part, with any claim derived from the Spanish or Mexican Government." And further, that said plaintiffs in said suit failed and neglected to make holders of said alleged claims and patents parties defendant to said suit, as required by law, but proceeded to try said cause, obtained a decree of confirmation against the United States, which has long since become final, and upon which said final decree the official survey, as provided by law, has been made, completed, and approved by this court upon the application and at the instance of the plaintiffs in said original cause and the said George Hill Howard, their attorney of record, and that said George Hill Howard was, at and during all times, the attorney of record for and on behalf of the plaintiffs in said cause, and had the management and control of the same, and still has, and was presumed conversant with all the forms of procedure and proceedings and requirements of the law in the premises; that by reason of the failure of said original plaintiffs and of their attorney, George Hill Howard, to make all adverse claimants and holders of patents, as alleged in this petition, parties defendant; and by reason of the allegations and disclaimer contained in the original petition, in paragraph 11th aforesaid, they thereby waived and disclaimed all right, if any they had, to challenge any disposition theretofore made under the laws of the United States to any portion of said grant.

Further answering, the defendant, the United States, says the petitioners ought not to have or maintain their said petition, for that no claim was made in said original suit for any wrongful disposition made by the United States, if any, of any portion thereof, under the public lands laws, and therefore abandoned the same, and permitted and induced a confirmation without regard to any such wrongful disposition by the United States and prosecuted the same to final judgment, approval of the official survey, and the certification thereof to the Commissioner of the General Land Office for patent, which said patent is ready to be issued and delivered upon the payment of one-half of the costs and charges incurred in that behalf, as provided by law.

Wherefore, the defendant says the petitioners should not have or maintain their petition and that the same should be denied and dismissed.

MATT. G. REYNOLDS,
U. S. Attorney, C. P. L. C.

the clerk the deposition of George Hill Howard, which deposition is in the words and figures following, to wit:

12 In the United States Court of Private Land Claims, sitting at Santa Fe, N. M. April session, A. D. 1900.

IN RE NO. 140 AND JOSE YSABEL MARTINEZ	}	Petition for compensa-
et al. and George Hill Howard		tion for lands disposed
vs.		of by the United
UNITED STATES.	}	States.

Deposition of G. Hill Howard.

Now comes George Hill Howard in the matter of the foregoing said petition, who, upon being duly sworn, deposes and says, to wit:

1. That he has since A. D. 1892 until now and is still the solicitor of Jose Ysabel Martinez and his copetitioners and coconfirmes in the matter of all steps and proceedings relating to the Juan Jose Lobato grant before the Court of Private Land Claims.

2. That prior and up to the survey of said grant, under the decree of confirmation thereof by said court and the approval thereof, that neither the said Jose Ysabel Martinez, his coclaimants and coconfirmes of said grant, nor deponent, as their solicitor, knew or could know or certainly allege and affirm that the lands granted and disposed of by the United States as set forth and shown in the above said petition were within the exterior limits of the said Lobato grant, wherefore the matter of the said disposition of said lands by the United States, as set forth in above said petition, was not set up, alleged, shown, and affirmed in the proceedings for confirmation of the said grant in and before said court.

3. That from and since December, A. D. 1892, deponent has been largely interested in the aforesaid grant, but that he only became aware of the aforesaid lands so disposed of as alleged and shown in 13 the aforesaid petition by the United States being within said grant until within the past two years.

4. Deponent is advised and believes that the matter of compensation from the United States for the lands within said grant by it disposed as alleged, shown and sought in and by the aforesaid petition, is properly a separate and necessarily a separate and supplementary proceeding to the confirmation and approved survey of said grant; that the lands so disposed of by the United States are worth more than \$1.25 per acre.

Further deponent saith not.

GEORGE HILL HOWARD.

Santa Fe, N. M., April 25, 1900.

Subscribed and sworn to before me at the city of Santa Fe, New Mexico, this the 25th day of April, A. D. 1900.

[SEAL.]

JAMES H. REEDER,

Clerk Court of Private Land Claims.

(Endorsement:) Court Private Land Claims. In re No. 140 and Jose Isabel Martinez et al. and George Hill Howard vs. United States. Deposition of George Hill Howard. Filed in the office of the clerk, Court of Private Land Claims, April 27, 1900. James H. Reeder, clerk.

14 And be it further remembered that on the said day last mentioned, to wit, the 26th day of April, A. D. 1900, there was filed in the office of the clerk a demurrer, which demurrer is in words and figures following, to wit:

15 In the Court of Private Land Claims, Santa Fe district.

JOSE ISABEL MARTINEZ ET AL. AND	}	Juan Jose Lobato grant.
George Hill Howard		
<i>vs.</i>		
UNITED STATES.		

In	}	No. 140. Juan Jose Lobato grant.
JOSE ISABEL MARTINEZ ET AL.		
<i>vs.</i>		
UNITED STATES.		

Demurrer to answer.

Now come the petitioners in the petition of Jose Isabel Martinez et al. and George Hill Howard against the United States, filed on the 23rd day of April, A. D. 1900, in the case of Jose Isabel Martinez et al. *vs.* United States, No. 140, on the docket of this court, by their counsel, G. Hill Howard and G. Hill Howard in propria persona, and demur to the answer of the United States in and to said petition upon the following grounds, to wit:

That the said answer does not state facts sufficient to constitute a defence to the cause of action set up, alleged, and shown in and by the said petition and exhibits filed therewith, nor as to the relief in said petition sought and prayed for.

G. HILL HOWARD,
Solicitor for Petitioners.

(Endorsement:) Court of Private Land Claims, Santa Fe district. Jose Isabel Martinez et al. and George Hill Howard *vs.* United States. In No. 140. Jose Isabel Martinez et al. *vs.* United States. Demurrer to answer of United States. Filed in the office of the clerk, Court of Private Land Claims, April 27, 1900. James H. Reeder, clerk. G. Hill Howard, solicitor for petitioners.

16 And be it further remembered that thereafter, to wit, on the 26th day of April, A. D. 1900, being the 4th day of the April term of said court, 1900, held at Santa Fe, New Mexico, the following proceedings were had:

JOSE ISABEL MARTINEZ ET AL.	}	No. 140. Juan Jose Lobato grant.
<i>vs.</i>		
UNITED STATES.		

The above-entitled cause having come up for argument on the demur'or of George Hill Howard to the answer of the Government filed on the 26th day of April, 1900, George Hill Howard, esq., appeared for and on behalf of the plaintiffs in this cause, Mr. Mathew G. Reynolds, U. S.

attorney, appeared for the United States, after full argument on both sides, the court took the matter at issue under advisement.

17 And be it further remembered that thereafter, to wit, on the 10th day of May, 1900, there was filed in the office of the clerk an agreed statement of facts, which statement is in words and figures following, to wit:

18 Court of Private Land Claims, Santa Fe district, April session, 1900.

JOSÉ ISABEL MARTINEZ ET AL.
and G. Hill Howard

vs.

UNITED STATES,

In re

JOSÉ ISABEL MARTINEZ ET AL.

vs.

UNITED STATES.

No. 140. Juan Jose Lobato grant.

The court, upon the hearing of the demurrer interposed by plaintiffs to answer of defendant, the United States, having found the said demurrer to be well taken to the allegations and contentions of said defendant, to wit:

The plaintiffs, by their failure to make any allegation in their original petition of said cause No. 140, of the disposition of the lands by the United States in the supplemental petition complained of, and by failing to serve the patentees of the lands so disposed of with copies of the original petition in said cause No. 140, and by taking judgment of confirmation for the whole tract, the subject of said cause No. 140, they waived and abandoned all claim for compensation; and that the court has not now jurisdiction in the premises, and to make award to plaintiffs for compensation as set out and sought for in the said supplemental petition;

And the court having thereupon in the matter of this petition ordered the same to be set down for trial of the facts therein set out on the 10th day of May, 1900:

Now, the counsel for plaintiffs and the counsel for defendant, United States, make and enter into the following stipulation:

1. That the United States has disposed of lands within the limits of the Juan Jose Lobato grant, the subject of said cause No. 140, as the same was finally approved and confirmed by the Court of Private Land Claims to the extent and in the manner and at the dates as shown hereinafter, and said Juan Jose Lobato grant was finally approved and confirmed by the Court of Private Land Claims as a valid, perfect, and subsistent grant on the 4th day of December, 1893,

2. That one dollar and twenty-five cents (\$1.25) per acre is the reasonable value, exclusive of betterments, of the lands so disposed of by the United States;

3. That the lands so disposed of by the United States were to the individuals named herein and at the times and manner shown as follows:

H. E. No. 2972, made January 27, 1888, by Jose Pablo Jaramillo. Final certificate No. 1940, dated February 15, 1893. E. $\frac{1}{2}$ of SE $\frac{1}{4}$ sec. 6, T. 21 N., R. 6 E., 80 acres. Patented May 17, 1893.

H. E. No. 4076, made January 14, 1893, by Jose Pablo Jaramillo. Final certificate No. 1940, dated February 15, 1893. W. $\frac{1}{2}$ SW. $\frac{1}{4}$ sec. 5, T. 21 N., R. 6 E., 80 acres. Patented May 17, 1893.

H. E. No. 2926, made November 21, 1897, by Epifanio Jaramillo. Final certificate No. 1872, dated September 19, 1892. N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ sec. 18, and SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ sec. 7, T. 21 N., R. 6 E., 156.82 acres. Patented January 13, 1893.

H. E. No. 2925, made November 21, 1887, by Bartolo Valdez. Final certificate No. 1807, dated May 23, 1892. SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ sec. 18, T. 21 N., R. 6 E., 160 acres. Patented 3, 1898.

H. E. No. 2927, made November 21, 1887, by Jose Arcadio Garcia. Final certificate No. 1939, dated February 15, 1893. NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ sec. 21, NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ sec. 20, S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 17, T. 21 N., R. 6 E., 160 acres. Patented May 17, 1893.

H. E. 1985, made July 27, 1883, by Tomas Martinez. Final certificate No. 1066, dated October 10, 1883. Lots 1 and 2, sec. 3, T. 23 N., R. 7 E., S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 34, T. 24 N., R. 7 E., 158.93 acres. Patented February 25, 1885.

H. E. No. 1905, made February 5, 1883, by Pedro Y. Jaramillo. Final certificate No. 1883, dated October 13, 1883. Lots 3 and 4 SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ sec. 3, T. 24 N., R. 7 E., 150.37 acres. Patented February 25, 1885.

H. E. No. 1941, made July 7, 1883, by Jose Romulo Martinez. Final certificate No. 1065, dated October 10, 1883. SW. $\frac{1}{4}$ sec. 3, T. 24 N., R. 7 E., 160 acres. Patented February 25, 1885.

H. E. 1949, made July 11, 1883, by Sixto Chavez. Final certificate No. 1085, dated October 19, 1883. SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ sec. 3. Lots 1 and 2 SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ sec. 4, T. 24 N., R. 7 E., 150 acres. Patented February 25, 1885.

H. E. 1946, made July 11, 1883, by Francisco Jaramillo. Final certificate No. 1067, dated October 10, 1883. SE. $\frac{1}{4}$ sec. 4, T. 24 N., R. 7 E., 160 acres. Patented February 25, 1885.

H. E. No. 1989, made July 28, 1883, by Juan A. Alire. Final certificate No. 1072, dated October 10, 1883. SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 19, NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ sec. 30, T. 25 N., R. 7 E., 140 acres. Patented February 25, 1885.

H. E. No. 1944, made July 10, 1883, by Martin Lopez. Final certificate No. 1084, dated October 19, 1883. E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ sec. 30, E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 19, T. 25 N., R. 7 E., 140 acres. Patented February 25, 1885.

H. E. No. 1988, made July 27, 1883, by Vitorbo Archuleta. Final certificate No. XXX, 1070, dated October 10, 1883. N. $\frac{1}{2}$ S. W. $\frac{1}{4}$, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, sec. 32, T. 25 N., R. 7 E., 160 acres. Patented February 25, 1885.

Total amount of land embraced in above homesteads 1,856.73 acres.

4. That none of the patentees and adverse possessors named in paragraph three hereof were parties to said suit for confirmation of said Juan Jose Lobato grant; nor were they served with copy of the petition and citation, nor did they or any of them appear or enter appearance therein.

5. That this cause is submitted to the court upon the pleadings and

exhibits filed herein, and in addition thereto also upon the entire record of the original proceedings for a confirmation of the Juan Jose Lobato grant, being the case of Jose Isabel Martinez, Jose Odoso Garcia, Felipe Salazar, Jose Bicente Garcia, Jose Odorio Martin, Severo Gallegos, Jose Vicente Mestas, Anastacio Gallegos, Julio Gallegos, Jose Gregorio Mestas, Patricio Martinez, Ramon Martin, Jose Merced Sanchez, Tomas Herrera, Cornelio Vigil, Francisco Gallegos, Miguel Martinez, Pablo Trujillo, Venceslado Garcia, Francisco Lara, Pablo Gallegos, Benito L. Martinez, Evaristo Martinez, Maria Sisneros, Francisco Antonio de Herrera, Maria Antonia Sanchez, Maria Anastacia Archuleta, Maria Esmalda Mestas, Jose de la Cruz Gallegos, Jose Rafael Herrera, Pedro Salazar y Garcia, Antonio Onofre Ortega, Jose Francisco Lovato, Jose Rafael Lovato, Pedro Ignacio Trujillo, Maria Antonia Fernandez, Juan Florencio Archuleta, Jose Ignacio Trujillo, Samuel Eldodt, Maria Antonia Sanchez, Jose Rafael Herrera, Benito L. Martinez, Gabriel Ortega, Jose Manuel Ortega, Rosario Ortega, Miguel Ortega, Jose Manuel Garcia, Eutimio Vigil, Felipe Vialpando, and Casimiro Vialpando, vs. United States, No. 140 on docket of this court. All of which said record is to be considered as offered in evidence by the United States and the same to become also a part of the record in this proceeding.

G. HILL HOWARD,
Attorney for Plaintiffs.
MATT. G. REYNOLDS,
U. S. Attorney, C. P. L. C.

23 And be it further remembered that thereafter, to wit, on the 11th day of May, A. D. 1900, being the 16th day of the April term of said court, 1900, held at Santa Fe, in the Territory of New Mexico, the following proceedings were had:

24 Court of Private Land Claims, Santa Fe district, April session, 1900.

JOSE ISABEL MARTINEZ ET AL. &	} No. 140.
G. Hill Howard	
<i>vs.</i>	
UNITED STATES.	
In re	
JOSE ISABEL MARTINEZ ET AL.	
<i>vs.</i>	
UNITED STATES.	

The matter of this petition and cause coming on to be heard upon the pleadings, exhibits, and stipulation therein filed:

And the same having been examined and inquired into by the court, and it being fully advised in the premises, doth now find and adjudge:

1. That the court under the statute has now jurisdiction in the subject of a matter of this petition, and that this jurisdiction continues until the power conferred upon the court is exercised, which in this case has not been done.

2. That on the 4th day of December, A. D. 1893, a decree of this court was made and entered in cause No. 140 confirming the Juan Jose

Lobato grant, the subject of said cause, as a subsistent, perfect, and complete grant, which decree and the survey thereunder has become final.

3. That at the dates hereinafter set forth the United States disposed of lands within the limits of said grant and gave patents for the said lands so disposed of to the extent and manner shown in paragraph 5 hereof.

4. The petitioners are therefore entitled at the hands of this court to a money judgment against the United States under sec. 14 of the act constituting this court for the lands within the limits of the said Juan Jose Lobato grant so disposed of by the United States.

25 5. That the lands so disposed of within said grant by the United States and patents therefor issued were to the individuals, extent, time, and manner as follows, to wit:

H. E. No. 2972, made Jan. 27, 1888, by Jose Pablo Jaramillo. Final certificate No. 1940, dated Feb. 15, 1893. E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 6, T. 21 N., R. 6 E., 80 acres. Patented May 17, 1893.

H. E. No. 4076, made Jan. 14, 1893, by Jose Pablo Jaramillo. Final certificate No. 1940, dated Feb. 15, 1893. W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ sec. 5, T. 21 N., R. 6 E., 80 acres. Patented May 17, 1893.

H. E. No. 2926, made Nov. 21, 1887, by Epifanio Jaramillo. Final certificate No. 1872, dated Sept. 19, 1892. N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ sec. 18, and SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ sec. 7, T. 21 N., R. 6 E., 156.82 acres. Patented Jan. 13, 1893.

H. E. No. 2925, made Nov. 21, 1887, by Bartolo Baldez. Final certificate No. 1807, dated May 23, 1892. SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$; SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$; of SE. $\frac{1}{4}$; NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ sec. 18, T. 21 N., R. 6 E., 160 acres. Patented Sept. 2, 1898.

H. E. No. 2927, made Nov. 21, 1887, by Jose Arcadio Garcia. Final certificate No. 1939, dated Feb. 15, 1893. NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ sec. 21; NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ sec. 20; S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 17, T. 21 N., R. 6 E., 160 acres. Patented May 17, 1893.

H. E. No. 1985, made July 27, 1883, by Tomas Martinez. Final certificate No. 1066, dated October 10, 1883. Lots 1 and 2, sec. 3, T. 23 N., R. 7 E.; S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 34, T. 24 N., R. 7 E., 158.93 acres. Patented Feb. 25, 1885.

26 H. E. No. 1905, made Feb. 5, 1883, by Pedro Y. Jaramillo. Final certificate No. 1883, dated Oct. 13, 1883. Lots 3 and 4; SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$; SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ sec. 3, T. 24 N., R. 7 E., 150.37 acres. Patented Feb. 25, 1885.

H. E. No. 1941, made July 7, 1883, by Jose Romulo Martinez. Final certificate No. 1065, dated Oct. 10, 1883. SW. $\frac{1}{4}$ sect. 3, T. 14 N., R. 7 E., 160 acres. Patented Feb. 25, 1885.

H. E. No. 1949, made July 11, 1883, by Sixto Chaves. Final certificate No. 1085, dated Oct. 19, 1883. SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ sec. 3; lots 1 and 2; SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ sec. 4, T. 24 N., R. 7 E., 150.61 acres. Patented Feb. 25, 1885.

H. E. No. 1948, made July 11, 1883, by Francisco Jaramillo. Final certificate No. 1067, dated October 10, 1883. SE. $\frac{1}{4}$ sec. 4, T. 24 N., R. 7 E., 160 acres. Patented Feb. 25, 1885.

H. E. No. 1989, made July 28, 1883, by Juan A. Alire. Final certificate No. 1072, dated Oct. 10, 1883. SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 19; NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ sec. 30, T. 25 N., R. 7 E., 140 acres. Patented Feb. 25, 1885.

H. E. No. 1944, made July 10, 1883, by Martin Lopez. Final certificate No. 1084, dated Oct. 19, 1883. E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ sec. 30, E. $\frac{1}{2}$ of SE. $\frac{1}{2}$ sec. 19, T. 25, N., R. 7 E., 140 acres. Patented Feb. 25, 1885.

H. E. No. 1988, made July 27, 1883, by Viturbo Archuleta. Final certificate No. 1070, dated Oct. 10, 1883. N. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, sec. 32, T. 25 N., R. 7 E., 160 acres. Patented Feb. 25, 1885.

Total amount of land embraced in above homesteads, 1,856.73 acres.

6. The value of said lands, exclusive of betterments, as shown by the evidence and stipulations of the parties, is one dollar and twenty-five cents (\$1.25) per acre.

27 Wherefore it is ordered, adjudged, and decreed that the named petitioners in this cause, for themselves and in trust for the heirs and legal representatives of Juan Jose Lobato, the original grantee, do have and receive from the United States compensation for the lands, aggregating eighteen hundred and fifty-six and seventy-three hundredths (1856.73) acres, by it so disposed of and patented within the limits of the said Juan Jose Lobato grant, as above set forth and shown, and as found by this court to be the fact, for the sum of two thousand three hundred and twenty dollars and ninety-one cents (\$2,320.91), being at the valuation of \$1.25 per acre, and that the said amount shall be and constitute a charge upon the Treasury of the United States in favor of said petitioners.

And it is so ordered.

JOSEPH R. REED,
Chief Justice.

28

Opinion of the court.

In the U. S. Court of Private Land Claims, April term, 1900, Santa Fe, New Mexico.

JOSÉ ISABEL MARTINEZ ET AL.
versus
UNITED STATES.

No. 140. Juan Jose Lobato grant.

On the 4th day of December, 1893, a decree was entered in this cause confirming the claim of petitioners as a complete and perfect grant. In their petition for confirmation plaintiffs alleged there were no adverse claimants to any portion of the land, and the decree confirmed to them all the lands within the boundaries established, making no reservation of any lands which may have been sold or disposed of by the United States. A survey of the whole tract has been made, and the plat thereof has been approved by the court and certified to the Secretary of the Interior for the issuance of a patent. The present proceeding is a petition, under the 14th section of the act under which this court is constituted, for compensation for 2,056.73 acres, which plaintiffs allege have been entered under the public land laws of the United States, and for which patents had issued before the suit for confirmation was instituted, but which fact was then unknown to them.

In one division of the answer filed by the Government it is pleaded, in effect, that by the failure to make any allegation in their original petition of the disposition of lands now complained of, and by failing to serve

the patentees with copies of their petition, and by taking judgment of confirmation of the whole tract, they have waived and abandoned all claim for compensation. A demurrer to that portion of the answer was interposed by plaintiffs, which raises the only questions we are now called upon to consider.

The position of counsel for the United States is that no action for compensation for lands sold or disposed of by the United States within a grant confirmed by this court can be maintained, unless the fact of such sale or disposition was made to appear upon the trial of the original petition and the lands so disposed of identified in the decree of confirmation and excluded from its operation.

It must be born' in mind that we are dealing with a grant which was complete and perfect at the date of the treaty of cession—that is, the title and ownership of the property were vested absolutely in the grantees of the former government. The claimants, therefore, were the owners of the property in whole or in part. It needs neither argument nor the citation of authorities to establish that they could not be divested of their property by the mere act of the Government in giving patents to it to other parties. Claimants under grants of that character are permitted, but are not required, to file petitions in this court asking for the confirmation of their title; the benefits which accrue to them upon confirmation are that their title are adjudged to be complete and perfect, their lands are segregated by official survey, and they secure patents therefor from the Government. But the act provides in the 8th section: "If in any such case a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States * * *." And in the 14th section: "That if in any case it shall appear that the lands, or any part thereof, decreed to any claimant under the provisions of this act shall have been sold or granted by the United States to any other person, such title from the United States to such other person shall remain valid, notwithstanding such decree. * * *"

The first provision quoted contemplates, doubtless, that the lands disposed of by the Government within the grant shall be excluded by the terms of the decree of confirmation from its operation.

But it is equally clear that by the language of the 14th section the same result was intended to be effected, even though the decree should be silent on the subject.

When a claimant under such a grant files his petition in this court for confirmation, he by that act consents, in consideration of the benefits which will accrue to him under a decree of confirmation, to be divested of his title to all lands which the Government may have disposed of within his grant, and to accept the compensation provided in the act therefor; and the effect of the proceeding in this case was not only to divest the claimant of all title to the lands in question, but to establish and confirm the title thereto in the patentees under the Government. And it can make no difference at this time that the patentees were never served with copies of claimants' petition. For as they are not and could not be affected by the judgment, they were not necessary parties to the proceeding.

Taking the allegations of the present petition as true, which at this

stage of the proceedings must be done, the facts which will entitle the claimants to a money judgment under the 14th section of the act now exist. Their title is adjudged to be a perfect title, and a quantity of land within the grant had been disposed of by the Government, and they are divested of title to it by the proceedings and the statute; and it can make no difference that the decree of confirmation is silent on the subject, for the right to the compensation grown out of the facts that the lands were disposed of by the Government and that the former owners have been divested of the title to it, and these facts can be made to appear as readily in a proceeding subsequent to the decree of confirmation as in the proceedings in which that decree was entered.

31 The court under the statute has jurisdiction of the subject, and that jurisdiction continues until the power conferred upon the court is exercised.

An order will therefore be entered sustaining the demurrer to the portions of the answer in question, and the case will be set down for trial on the facts.

JOSEPH R. REED,
Chief Justice.

(Indorsed:) No. 140. Opinion. Filed in the office of the clerk, Court of Private Land Claims, May 8, 1900. Jas. H. Reeder, clerk, by I. L. Chaves, deputy.

32 In the Court of Private Land Claims.

JOSE ISABEL MARTINEZ ET AL. AND G. HILL	} No. 140. Juan Jose Lobato Grant.
Howard	
<i>versus</i>	
THE UNITED STATES.	

Dissenting opinion.

In my judgment, this court in the present condition of this case is not authorized to render a judgment against the United States for the value of lands disposed of within the grant tract.

My construction of section 14 of the act creating this court is that the expression "if in any case it shall appear," &c., means such a case as is provided for in the preceding sections of the act. And that the facts on which relief is to be had under that section must be made to appear as a part of the case and before the court has ceased to have jurisdiction over the land which is the subject of the case.

The facts of this matter are that a final decree of confirmation of the grant of the land was made and entered December 4th, 1893. That under that decree the land was surveyed, and on October 31st, 1898, the survey was by this court approved, which approval was entered on the official plat of the survey. Nothing more remains to be done further than the formal issue of a patent by the Land Department, which in these cases is purely a ministerial act. In my view, the land has been segregated from the public domain and has passed wholly out of the jurisdiction of this court, and there is no longer a case pending. It is sought to be claimed that such a supplemental proceeding as this can be maintained by reason of the peculiar language of section 14: "That if in

any case it shall appear that the lands, or any part thereof, decreed to any claimant under the provisions of this act have been sold or granted by the United States to any other person such title from the United States to such other person shall remain valid, notwithstanding such decree," &c.

33 I think this language must be construed in connection with, and subject to the provisions of section 8, under which this case was originally brought. It says that the court shall "determine the validity of the same (grant), and the right of the claimant thereto, its extent and boundaries, &c.," and if such title shall be established and confirmed, such confirmation shall "always except any part of such land that shall have been disposed of by the United States."

This language comprehends three ideas: First, the determination of the validity of the grant; second, a confirmation of the claim to the land covered by it; third, the excepting from the decree of confirmation of any part of the land disposed of by the United States. Now, before any part of the land can be excepted from the decree as having been disposed of by the United States, it must have been determined by the court that the land so to be excepted had been disposed of by the United States, which determination must necessarily precede the decree. So it is clear to my mind that the words of section 14 "decreed to any claimant" and "notwithstanding such decree" refer to the determination of the validity of the grant and of the right of the claimant thereto, and not to the final confirmation.

It also seems clear to me by a construction of sections 8 and 14 together that the lands to be paid for under section 14 are lands which have been excepted from the confirmation under section 8. But there is another, and I think conclusive, consideration. The statute is emphatic that all adverse claimants or possessors shall be made parties to the proceeding for confirmation. And this requirement applies equally to cases under section 8 as to cases under section 6 of the act. Under the statute the claimant is not entitled to any kind of relief whatever until he has complied with that prerequisite; neither to confirmation nor to compensation. While it is argued that the decree of confirmation does not affect the rights of adverse claimants as between the conferee and them-

34 selves, and therefore the rights of the United States are not substantially affected by the omission to make them parties; and while there may be some force in the suggestion in a case where the United States merely quitclaims its interest in the land, yet the argument fails to reach the case where an affirmative judgment is sought to be obtained against the United States.

The United States has authorized the suit to be brought against it, and has consented that the grant claimant may establish his superior right to the land as against it and as against its grantees. And it has agreed to answer over for its grantees by way of money compensation for all land which it has sold to its grantees to which the claimant may establish a superior title. But it has reserved for itself this protection, that the claim for such superior right shall be established, not only as against itself, but also as against its grantees. It has stipulated that the superior right to the land shall be proven, not only as against itself, but also as against its grantees. I wish this distinction emphasized: The distinction between the estab-

lishment of a claim and the proof of a right to have it established. It may be true that this court establishes the claim as against the United States only and not as against the grantees from the United States; yet the act of Congress expressly requires that the proof of the right to have the claim established shall be made as against the grantees from the United States as well as against the United States itself; and this applies to a claim for compensation as well as to confirmation. It is easily understood that in matters like that now under consideration, where a money judgment is sought, that this provision I have referred to is one of substantial importance as a protection to the Government. But whether we deem it of importance or not, it is sufficient to know that Congress deemed it so, and this court is not justified in ignoring it or nullifying it.

35 I am authorized to say that Mr. Justice Murray concurs in the views above expressed.

HENRY C. SLUSS, *Associate Justice*.

SANTA FE, NEW MEXICO, August 13th, 1900.

36 And be it further remembered that thereafter, to wit, on the 17th day of July, A. D. 1900, a petition and an order were filed with the clerk of said court, which said petition and order were, and are, in the words and figures following, to wit:

37 *Appeal and allowance.*

UNITED STATES OF AMERICA, *ss.*

Court of Private Land Claims, Santa Fe district.

JOSÉ ISABEL MARTINEZ, JOSÉ ODCSO GARCIA, FELIPE SALAZAR, JOSÉ BICENTE GARCIA, JOSÉ ODORIO MARTÍN, SEVERO GALLEGOS, JOSÉ VICENTE MESTAS, ANASTACIO GALLEGOS, JULIO GALLEGOS, JOSÉ GREGORIO MESTAS, PATRICIO MARTÍNEZ, RAMÓN MARTÍN, JOSÉ MERCEDES SÁNCHEZ, TOMÁS HERRERA, CORNELIO VIGIL, FRANCISCO GALLEGOS, MIGUEL MARTÍNEZ, PABLO TRUJILLO, VENCESLADO GARCÍA, FRANCISCO LARA, PABLO GALLEGOS, BENITO L. MARTÍNEZ, EVARISTO MARTÍNEZ, MARÍA SÍSNEROS, FRANCISCO ANTONIO DE HERRERA, MARÍA ANTONIA SÁNCHEZ, MARÍA ANASTACIA ARCHULETA, MARÍA ESMERALDA MESTAS, JOSÉ DE LA CRUZ GALLEGOS, JOSÉ RAFAEL HERRERA, PEDRO SALAZAR Y GARCÍA, ANTONIO ONOFRE ORTEGA, JOSÉ FRANCISCO LOVATO, JOSÉ RAFAEL LOVATO, PEDRO IGNACIO TRUJILLO, MARÍA ANTONIA FERNÁNDEZ, JUAN FLORENCIO ARCHULETA, JOSÉ IGNACIO TRUJILLO, SAMUEL ELLISON, MARÍA ANTONIA SÁNCHEZ, JOSÉ RAFAEL HERRERA, BENITO L. MARTÍNEZ, GABRIEL ORTEGA, JOSÉ MANUEL ORTEGA, ROSARIO ORTEGA, JOSÉ MANUEL GARCÍA, EUTIMIO VIGIL, FELIPE VIALPANDO, CASIMIRO VIALPANDO, MIGUEL ORTEGA, and GEORGE HILL HOWARD, plaintiffs and appellees,

vs.

THE UNITED STATES, DEFENDANT AND APPELLANT.

The above-named defendant, the United States, considering itself aggrieved by the decree entered on the eleventh day of May, A. D. 1900, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

MATT. C. REYNOLDS,
U. S. Attorney, for Defendant and Appellant.

And now, to wit, on the 9th day of July, A. D. 1900, it is ordered that the appeal be allowed as prayed for.

WILBUR F. STONE,
Associate Justice, C. P. L. C.

(Indorsed:) No. 140. In the Court of Private Land Claims. Jose Isabel Martinez et al. *vs.* United States. Juan Jose Lobato grant. Appeal and allowance. Matt. G. Reynolds, U. S. attorney.

38 And be it further remembered that thereafter, to wit, on the 19th day of July, A. D. 1900, a citation was filed with the clerk of said court, which citation is in the words and figures following, to wit:

39 *Citation on appeal to the Supreme Court.*

UNITED STATES OF AMERICA, *vs.*

The President of the United States to Jose Isabel Martinez, Jose Odoso Garcia, Felipe Salazar, Jose Bicente Garcia, Jose Odorio Martin, Severo Gallegos, Jose Vicente Mestas, Anastacio Gallegos, Julio Gallegos, Jose Gregorio Mestas, Patricio Martinez, Ramon Martin, Jose Merced Sanchez, Tomas Herrera, Cornelio Vigil, Francisco Gallegos, Miguel Martinez, Pablo Trujillo, Venecoslado Garcia, Francisco Lara, Pablo Gallegos, Benito L. Martinez, Evaristo Martinez, Maria Sisneros, Francisco Antonio de Herrera, Maria Antonia Sanchez, Maria Anastacia Archuleta, Maria Esmalda Mestas, Jose de la Cruz Gallegos, Jose Rafael Herrera, Pedro Salazar y Garcia, Antonio Onofre Ortega, Jose Francisco Lovato, Jose Rafael Lovato, Pedro Ignacio Trujillo, Maria Antonia Fernandez, Juan Florencio Archuleta, Jose Ignacio Trujillo, Samuel Ellison, Maria Antonia Sanchez, Jose Rafael Herrera, Gabriel Ortega, Jose Manuel Ortega, Rosario Ortega, Miguel Ortega, Jose Manuel Garcia, Eutimio Vigil, Felipe Vialpando, Casimiro Vialpando, and George Hill Howard, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 9th day of July, A. D. 1900.

WILBUR F. STONE,
Associate Justice, C. P. L. C.

I hereby acknowledge service of the foregoing citation for and on behalf of the plaintiffs and appellee, this 18 day of July, A. D. 1900.

G. HILL HOWARD,
Attorney for Appellee.

(Indorsed:) No. 140. F. No. 23. José Isabel Martinez et al. *vs.* United States. Citation on appeal to Supreme Court. Juan Jose Lovato Grant. Filed in the office of the clerk, Court of Private Land Claims, July 19, 1900. Jas. H. Reeder, clerk. By Ireneo L. Chaves, deputy.

40 Be it further remembered that the proceedings and record of said original cause and which are referred to in paragraph No. 5 of the foregoing stipulation of facts, filed on the 10th day of May, 1900, are as follows:

There was filed heretofore, to wit, on the 28th day of February, A. D. 1893, by Jose Isabel Martinez et al., by their attorneys, George Hill Howard and Jeffries & Earle, a petition in words and figures as follows, to wit:

41 In the United States Court of Private Land Claims.

1. JOSE ISABEL MARTINEZ, 2. JOSE ODOSO GARCIA, 3. Felipe Salazar, 4. Jose Bicente Garcia, 5. Jose Odorio Martin, 6. Severo Gallegos, 7. Jose Vicente Mestaz, 8. Anastacio Gallegos, 9. Julio Gallegos, 10. Jose Gregorio Mestaz, 11. Patrisio Martinez, 12. Ramon Martin, 13. Jose Merced Sanchez, 14. Tomas Herrera, 15. Cornelio Vigil, 16. Francisco Gallegos, 17. Miguel Martinez, 18. Pablo Trujillo, 19. Vencislado Garcia, 20. Francisco Lara, 21. Pablo Gallegos, 22. Benito L. Martinez, 23. Elbaristo Martinez, 24. Maria Sisneros, 25. Francisco Antonio de Herrera, 26. Maria Antonio Sanchez, 27. Maria Anastacio Archuleta, 28. Maria Esmalda Mestaz, 29. Jose de la Luz Gallegos, 30. Jose Rafael Herrera, 31. Pedro Salazar y Garcia, 32. Antonio Onofre Ortega, 33. Jose Francisco Lovato, 34. Jose Rafael Lovato, 35. Pedro Ignacio Trujillo, 36. Maria Antonio Fernandez, 37. Juan Florencio Archuleta, 38. Jose Ignacio Trujillo, 39. Samuel Eldodt, Maria Antonia Sanchez, Jose Rafael Herrera, Benito L. Martinez, Gabriel Ortega, Jose Manuel Ortega, Rosario Ortega, Miguel Ortega, Jose Manuel Garcia, Eutimio Vigil, Felipe Vialpando, Casimiro Vialpando

No. Juan
Jose Lovato
grant.

vs.

THE UNITED STATES.

Petition.

To their honours the judges of said court:

Your petitioners respectfully represent:

1. That they are the heirs at law and legal representatives of Juan Jose Lovato, and as such make claim to and assert ownership in fee of the lands and premises known as and called the "Juan Jose Lovato grant," situate in the county of Rio Arriba, territory of New Mexico, and bounded as follows: On the east by the old pueblo of Chama, on the west by the Piedra Lumbre hill, on the north by the Sierra de las Grullas, and on the south by the Sierra de Santa Clara, containing 100,-000 acres, more or less.

2. That said premises were originally granted to one Cristobal de Torres in the year 1724 by the Spanish captain-general of the province of New Mexico, in which grant decree the location and boundaries of said tract were laid down, as stated in paragraph 1 of this petition; that said grant was afterwards forfeited, and the tract was regranted to Juan Jose Lovato and Diego de Torres, a son of the former grantee, on 17 , by the same authority; that on account of the failure of said Lovato to comply with the ordinances then in force this second grant was forfeited and said tract "annotated" as royal domain by the then governor and captain-general of said province, whereby the right and title of said Lovato and Diego Torres to said premises became extinguished.

3. That on August , 1740, said Juan Jose Lovato presented his petition to Gaspar Domingo de Mendoza, governor and captain-general of said province, for a regrant of said tract, and on August 24, 1740, said Mendoza issued a decree granting said tract to said Lovato, and directed the chief alcalde, Juan Garcia de Mora, to place the grantee in possession of the same, a copy of which decree is herewith filed, marked "Exhibit A," and made part of this petition.

4. That on September 11, 1740, said Juan Garcia de Mora, pursuant to said decree, placed said Lovato in juridical possession of said tract in accordance with the forms prescribed by the laws, usages, and customs then in force in said province, a copy of the writ of said possession being herewith filed, marked "Exhibit B," and made part of this petition.

5. That on May 30, 1744, one Jose Romo de Vera, a justice of the peace appointed by the governor and captain-general to make an examination in respect to the lands of one Juan de Mestas, notified said Juan Jose Lovato to vacate the houses and premises occupied by him, said Romo asserting a claim thereto on behalf of said Mestas under the forfeited grant of said premises to Cristobal de Torres in 1724; that thereupon said Lovato submitted to the then governor and captain-general of New Mexico his title to said tract, and requested him to annul and revoke the finding, proceedings, and acts of said justice in respect to the claim of the estate or heirs of said Juan de Mestas.

6. That on June 15, 1744, Joaquin Codallos y Rabal, governor and captain-general, decreed that the grant of said premises to Juan Jose Lovato by said Mendoza, August 24, 1740, was valid, "subsistent, and permanent, and that said Juan Jose Lovato was entitled to be protected in

the possession thereof, as he had by said grant acquired just and lawful title for himself, his heirs, and successors," a copy of which decree is herewith filed, marked "Exhibit C," and made part of this petition.

44 7. That said title was presented to the surveyor-general of New Mexico on March 31, 1884, by Jose Ysabel Martinez and Gabriel Archuleta in behalf of themselves and their associates, all being entitled under said grant as the heirs, representatives, and successors of said Juan Jose Lovato—they being the owners and possessors of said tract by virtue of said grant and possession—for examination and decision under section 8 of the act of July 22, 1854.

8. That on April 2 and 3, 1884, said surveyor-general considered the claim of the petitioners, together with the record, exhibits, and testimony of witnesses before him in support thereof, and decided that said grant was valid, and reported the same to Congress for confirmation, a copy of which decision and exhibits is herewith filed, marked "Exhibit D," and made part of this petition.

9. Plaintiffs file herewith a sketch map of said premises showing approximately the location and boundaries of said tract.

10. That there are no gold, silver, or quicksilver mines or minerals within the boundaries of said tract.

11. That there are no adverse holders, possessors, or claimants of or to any portion of said tract, and that the same does not conflict in whole or in part with any claim derived from the Spanish or Mexican Government.

12. Plaintiffs further allege that by virtue of said perfect grant to said Lovato by said Mendoza on August 24, 1740, and the consequent delivery of juridical possession by said Juan Garcia de Mora on September 11, 1740, said tract was severed from the royal domain and became and continued to be the private and exclusive property of said grantee, his heirs and assigns; and that said land never became the property of Mexico and was not included in the cession of territory to the United

45 States under the treaty of Guadalupe Hidalgo or otherwise.

13. Plaintiffs further allege that they, their associates, and those under whom they claim have been in the peaceable adverse possession of said premises for a period of 153 years, and that by virtue of said long-continued possession they are vested with a perfect title to said tract by prescription.

14. That no final action by Congress or any tribunal of the United States with reference to the confirmation of said grant has been had.

15. That your petitioners are legal representatives of the said grantee in part by way of inheritance and in part by way of purchase and certain *de meise* conveyances filed as Exhibits 1, 2, 3, 4, 5, 6, and so forth.

Wherefore your petitioners pray that their title and claim under said grant and possession may be inquired into and decided by this court.

GEORGE HILL HOWARD,

JEFFRIES and EARLE,

Attorneys for Petitioners.

(Endorsement:) No. 140, File No., 7. Jose Isabel Martinez et al. No. 140, vs. United States. Filed Dec. 4, 1893. James H. Reeder, Clerk. By Ireneo L. Choves, Deputy.

46 And be it further remembered that on said day last mentioned, to wit, the 28th day of February, A. D. 1893, there was filed in the office of the clerk of said court a map, which said map is as follows, to wit:

(Here follows map marked p. 47.)

48 And be it further remembered that on the 24th day of March, A. D. 1893, a summons was issued by the clerk of said court; which summons, with all endorsements thereon, is in the following words and figures, to wit:

49 Form No. 167.
U. S. Court of Private Land Claims.

Summons.

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

JOSE ISABEL MARTINEZ ET AL., plaintiff, <i>versus</i>	} Petition filed in the clerk's office this 28th day of February, A. D. 1893.
THE UNITED STATES OF AMERICA, defendant.	

The President of the United States of America, to Matt. G. Reynolds, esq., attorney for the United States before the Court of Private Land Claims, greeting:

You, and each of you, are hereby notified that an action has been brought in said court, by José Isabel Martinez et al., plaintiff, against you as defendant, under the provisions of the act of the Congress of the United States, entitled "An act to establish a Court of Private Land Claims, and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action, in said court, within thirty days from the date of service of this summons upon you; and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness, The Honorable Joseph R. Reed, Chief Justice of the Court of Private Land Claims, and the seal of the said court, at the city of Santa Fe, in said district, this 24th day of March, A. D. 1893, and of the Independence of the United States the 117th year.

[SEAL.]

JAMES H. REEDER,
Clerk.

By IRENEO L. CHAVES,
Deputy Clerk.

50 *Proof of service.*

UNITED STATES OF AMERICA,
District of New Mexico, ss.

APRIL 1st, A. D. 1893.

I hereby certify, that I received the within writ on the 1st day of April, A. D. 1893, and that I have personally served the same upon the said defendant U. S. by delivering to — served on me this the day of April, 1893.

MATT. G. REYNOLDS, *U. S. Attorney.*

This writ, therefore, returned April 21st, as the law directs, this 21st day of April, A. D. 1893.

TRINIDAD ROMERO,
Marshal.

By SERAPIO ROMERO,
Deputy Marshal.

(Indorsed:) Gen. No., 140, F. No., 2. U. S. Court of Private Land Claims, District of New Mexico. Jose Isabel Martinez, plaintiff, versus The United States of America, defendant. Summons. Filed this 21st day of April, A. D. 1893. James H. Reeder, clerk. By Ireneo L. Chaves, deputy clerk. Geo. Hill Howard, Jeffries and Earle, of Santa Fe, attorneys for plaintiff.

51 And be it further remembered, that thereafter, to wit, on the 16th day of October, A. D. 1893, there was filed in the office of the clerk a supplemental petition and notice, which petition and notice are in the words and figures following, to wit:

52 United States Court of Private Land Claims.

JOSE ISABEL MARTINEZ ET AL.	}	No. 140. Juan Jose Lovato grant.
<i>v.</i>		
THE UNITED STATES.		

THOMAS B. CATRON, esq., attorney for petitioners in the cause before this court entitled Juan Torres and Jesus Torres v. The United States of America, No. 250.

SIR: You will please take notice that the purpose of serving you with the annexed petition is to make the petitioners, on whose behalf you have filed said petition, parties defendant in the case above entitled, and to advise you that the case No. 140 is fixed for trial during the first week of the term beginning November 13, 1893.

Very respectfully,

GEORGE HILL HOWARD,
JEFFRIES and EARLE,
Attorneys of Record in No. 140.

United States Court of Private Land Claims.

JOSÉ ISABEL MARTINEZ, JOSÉ ODOSO García, Felipe Salazar, and 47 others <i>v.</i> THE UNITED STATES OF AMERICA.	}	No. 140. Juan Jose Lovato grant.
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JUAN TORRES AND JESUS TORRES <i>v.</i> THE UNITED STATES OF AMERICA.	}	No. 250.
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Supplemental petition.

To their honors the chief justice and associate justices of said court:

Your petitioners, by their attorneys of record herein, praying leave to file this supplemental petition, respectfully show as follows, to wit:

1. That on February 28, 1893, they filed their original petition herein (No. 140) praying that inquiry be made into the validity of their grant, and that the same might be confirmed; that, being unaware of any conflicting interests, they made no one party thereto along with the United States, but that thereafter, to wit, on March 3, 1893, one Juan Torres and one Jesus Torres, by Messrs. Catron & Coons, of which firm Thomas B. Catron, esquire, is survivor, filed their petition, No. 250, on your docket, wherein they pray for the confirmation of the grant "known and called by the name of _____," alleged to have been made on June 6,

1724, to one Cristobal de Torres, by Juan Domingo de Bustamante, governor and captain-general of New Mexico, alleging that said
54 Torres was placed in juridical possession of said land on June 9, 1724, which they now claim to own by inheritance and conveyance, which said grant is in conflict with the grant of your petitioners, as will fully appear by a reading of the petitions filed by the respective parties.

2. Your petitioners allege and aver that if any such grant was made on June 6, 1724, to said Torres, of the land described in the petition in case No. 250 on your docket, the same was forfeited and annotated as forfeited, and it again became part and parcel of the public domain of Spain, and they deny that said Juan Torres and Jesus Torres, or any of those in whose behalf they bring suit, have any interest whatever in said petition; that said tract was thereafter regranted by the same authority, to wit, by Governor Bustamante to Juan Jose Lovato and Diego de Torres, the son of Cristobal de Torres. And your petitioners further allege and say that this second grant, made as just stated, was itself subsequently denounced as forfeited and the land annotated as part of the royal domain; that a third grant thereof was made on August 24, 1740, to Juan Jose Lovato by Governor Mendoza, who in his granting decree directed the chief alcalde, Mora, to place said Lovato in possession of said premises, which said Mora did on September 11, 1740, "under the boundaries which are stated in the former grant which he asked in company with Captain Diego de Torres;" all whereof, together with sundry other proceedings in relation thereto, is fully set out in your petitioners' original petition.

3. Your petitioners expressly deny the allegation in petition No. 250, to wit:

"That there is no person in possession of said land claiming the same adversely to your petitioners or otherwise than by leave or permission of your petitioners and those jointly interested with your petitioners as heirs and assigns under said original grantee, his heirs and assigns."

4. Your petitioners allege and aver that all the allegations and statements in their original petition herein are true, and they deny each and every allegation, averment, and statement in said petition of said Juan Torres and Jesus Torres, numbered 250, which is in conflict or at variance with their own petition numbered 140 or this amendment thereof; and they ask that said Juan Torres and Jesus Torres be made parties to this proceeding on their own account and behalf, and in behalf of any and all others on whose behalf they pray. And your petitioners renew the prayer of their said original petition.

And they pray further that Juan Torres and Jesus Torres, the petitioners in No. 250, be made parties hereto both in their own behalf and in behalf of such persons as they in said petition represent.

JEFFRIES and EARLE,
GEO. HILL HOWARD,
Attorneys for Petitioners.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, Oct. 16, 1893. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

56 And be it further remembered that thereafter, to wit, on the 20 day of November, A. D. 1893, there was filed in the office of the clerk an answer; which answer is in words and figures following, to wit:

57 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fe district.

JOSE ISABEL MARTINEZ, AND OTHERS, PLAINTIFFS,	}	No. 140.
<i>vs.</i>		
THE UNITED STATES, DEFENDANT.	}	

Answer.

Comes now the United States by Matt G. Reynolds, its attorney, and for answer to so much and such parts of the petition filed in the above-entitled cause as it is material and necessary for it to answer, answering, says:

"That it has no knowledge or information sufficient to enable it to form a belief as to whether or not the tract of land, of which confirmation is sought in said petition, was granted or ceded to the predecessors in interest of said plaintiffs by any authority whatever at any time.

"That it has no knowledge or information sufficient to enable it to form belief as to whether or not plaintiffs are heirs, legal representatives and holders by purchase of all or any part of the right and title of the original grantee to said tract or alleged grant of land, if any he had.

58 That it has no knowledge or information as to whether or not the proceedings were had as in said petition set forth, or as to whether or not Gaspar Domingo de Mendoza in August, 1740, or at any other time, made a regrant of said lands to Juan Jose Lovato, as set forth in said petition.

That it has no knowledge or information as to whether juridical and lawful possession of said alleged grant was ever given by the authorities duly authorized thereto; but further answering it says that if such possession was given of said lands that neither the grantee nor those holding under him have had continuous and undisputed possession thereof since the time of said alleged giving of possession, nor have the conditions imposed by law as well as by said alleged grant been complied with.

Further answering, it says that whatever claim plaintiff may have to said alleged grant of lands it is not such as under the laws of nations, the treaty of cession, or the laws of the United States is entitled to confirmation by this court.

All other allegations not hereinbefore answered are denied, and it is demanded that plaintiffs be put to their proof of all the allegations in said petition, as provided they shall be by the act of Congress approved March 3, 1891, under which this court assumes jurisdiction of this controversy; and that they shall be put to their proof as to their pretended interest in said alleged grant.

Now having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and that it may be authorized to make in the premises.

Respectfully submitted.

(Signed)

MATT G. REYNOLDS,

U. S. Attorney.

59 And be it further remembered that thereafter, to wit, on the 4th day of December, A. D. 1893, being the 17th day of the November term of said court, 1893, held at Santa Fe, in the Territory of New Mexico, the following proceedings were had:

JOSE ISABEL MARTINEZ ET AL.)

vs.

THE UNITED STATES.)

No. 140. Juan Jose Lobato grant.

In the above-entitled cause there appeared Geo. Hill Howard, Jeffries and Earle for plaintiffs, and Matt G. Reynolds, esq., United States attorney, appeared for and on behalf of the said defendant, the United States, and the said parties, having announced themselves ready, the trial of the cause was proceeded with on the pleadings presented. Oral and documentary proof was introduced, after which the cause was argued and submitted.

28 THE UNITED STATES VS. JOSÉ ISABEL MARTINEZ ET AL.

60 The evidence, both oral and documentary, offered and introduced on the trial is as follows, to wit:

61 *The evidence, both oral and documentary, offered and introduced on the trial is as follows, to wit:*

62 In the U. S. Court of Private Land Claims, Santa Fe district, November term, 1893.

JOSE ISABEL MARTINEZ, PLAINTIFF, } No. 140. "Juan Jose Lobato
vs. } grant."
THE UNITED STATES, DEFENDANT. }

Transcript of the trial.

Upon the trial of the above-entitled cause the following proceedings were had:

Present as counsel, Wm. E. Earle, esquire, and Geo. H. Howard, esquire, for plaintiff; Matt. G. Reynolds, esquire, U. S. attorney, for the defendant; Wm. M. Tipton, esquire, special agent.

NOVEMBER 20TH, 1893.

WILL. M. TIPTON, called as a witness for plaintiff, testified as follows:

Examination by Mr. HOWARD:

Q. I will get you to examine the paper marked A, filed in case number 198 in the surveyor-general's office; please examine the signatures.

A. I have done so.

Q. Is that, in your opinion, the genuine signature of Governor Mendoza?

A. Yes, sir; it is his signature. It is the signature of Governor Mendoza, to that portion of the document dated 24th day of August, 1740.

Q. Do you find the signature of Ruibal there?

A. There is a signature of his to the document following the petition of Juan Jose Lobato, it is dated on the 10th of June, 1744.

Q. Are you acquainted with the signature of Ruibal?

A. Yes, sir.

Q. Is that his genuine signature?

A. It is.

Q. Are you acquainted with the signature of Juan Garcia de la Mora, affixed to the act of juridical possession?

A. I have seen his signature, but not very frequently; I am not as well acquainted with it as I am with many of the signatures of officials who have signed this document.

Cross-examination by Mr. REYNOLDS:

Q. That is not one of the original archives, is it?

A. No, sir; I see no mark on it to show that it is.

Q. All those archives have marks on them—initialed or marked as archives?

A. Yes, sir.

64 Q. That appears in a case filed in the surveyor-general's office on J 22, 1854?

A. Yes, sir.

Direct examination continued (HOWARD):

Mr. HOWARD. I introduce Document A, filed in the surveyor-general's office, the original testimonio.

(The same was marked "Exhibit A.")

Q. I will get you to examine document filed in this case as Exhibit B, the original Spanish document, and state if the signature of Valez Cachupin is genuine.

A. Yes, in my opinion, it is; but he has not written the name as you have called it, he has simply written "Valez," and attached a scroll.

Q. Are acquainted with the signature of Juan Jose Lobato?

A. Yes, sir.

Q. Does it appear attached to this document?

A. Yes, sir.

Q. Is it genuine?

A. I think it is.

Cross-examination by Mr. REYNOLDS:

Q. Is that an archive?

A. No, sir.

Q. State what it is.

A. It is not an archive.

Q. Has it been filed in the surveyor-general's office?

65 Mr. HOWARD. It has never been filed in the surveyor-general's office.

That's all I want with Mr. Tipton, but I wish to introduce on behalf of plaintiff:

Exhibit C. Testimony of Juan Gallegos taken before the U. S. surveyor-general. File 198.

Exhibit D. Cristobal Torres grant, copies and translations.

Exhibit E. Revocation Cristobal Torres grant, archive 944, copies and translations.

Exhibit F. Portion of will of Jose Ignacio Martinez, paragraphs 7 & 10.

Exhibit G. Will of Petrona Gonzales, paragraphs 3, 4, and 5.

Exhibit H. Deed dated A. D. 1842, Santiago Martinez to Ignacio Martinez.

Exhibit I. Deed A. D. 1791, Lieutenant Juan Ignacio Mestas to Bartolo Vigil.

Exhibit J. (No date.) Sension Varos to Nicolas Vigil.

Exhibit K. Deed dated A. D. 1766, conveyance Maria Sanchez to Pedro Ortega.

Exhibit L. A. D. 1814, deed from Pedro Ortega and Jose Ambrosio Ortega to Bernabel Ortega.

Exhibit M. Deed, A. D. 1829, from Bernabe Antonio Ortega to Ramon Vigil.

Exhibit M. A. D. 1844, deed from Bartolo Vigil to Jose Ramon Vigil.

Exhibit O. Deed, dated A. D. 1850, from Jose Rinaldo de Herrera to Jose Ramon Vigil.

Exhibit P. Deed dated A. D. 1851, from Maria Francisca Vigil to Jose Ramon Vigil, a

66 Exhibit Q. Deed dated A. D. 1855, from Jose Eusebio Vigil and others to Ramon Vigil.

Exhibit R. Deed dated A. D. 1887, from Jose Ramon Vigil to Juan Garcia.

Exhibit S. Deed dated A. D. 1887, from Juan Garcia to Samuel Eldodt.

Exhibit T. Deed dated 1780, from Antonio Mestas and Antonio Sisneros, sold to Antonio Sisneros.

Exhibit U. Deed dated A. D. 1798, from Antonio Mestas to Merejildo Sisneros.

Exhibit V. Deed dated A. D. 1790, from Merejildo Sisneros to Lieutenant Pedro Martin.

Exhibit W. Deed dated A. D. 1790, conveyance from Jose Manuel Sanchez to Lieutenant Pedro Martin.

FRANCISCO VIGIL, sworn as a witness on behalf of the plaintiff, testified, in Spanish, as follows:

Examination by Mr. HOWARD.

Q. How old are you and where do you live?

A. I am sixty years old, and I live at Española.

Q. Who was your father?

A. Jose Ramon Vigil.

Q. Who was your father's father, your grandfather?

A. Nicolas Vigil.

Q. Did he have any brothers?

A. Yes, sir.

Q. Who?

A. The oldest one was Maria Antonio, another one's name was Maria Manuela.

67 Q. Who was Bartolo Vigil?

A. He was a brother of my grandfather.

Q. The grandfather you have spoken of?

A. Yes, sir; the father of my father.

Q. How long has your father been dead?

A. He died six months ago to-day.

Q. Where did your father live?

A. He lived at Española.

Q. Did he ever live anywhere else?

A. He lived for a short while at Conejos.

Q. Do you know this tract of land called the Lobato grant?

A. No, sir; I have heard the name of it, but I do not know it.

Q. Did your father own any land in Rio Arriba County?

Mr. REYNOLDS. Objected to as leading.

(Withdrawn.)

Q. Where did your father own land?

A. At the place called Chama River.

Q. Did he own that grant when he died?

A. He had sold it already.

Q. Who did he sell it to?

A. Juan Garcia.

Q. Do you know Juan Garcia?

A. Yes, sir.

Q. Does he own that land now?

A. He sold it to Samuel Eldred.

68 Cross-examination by Mr. REYNOLDS:

Q. Did your father own a grant or piece of land in Rio Arriba County?

A. Yes, sir; he had quite many lands there. In former times Española belonged to Rio Arriba County.

Q. Where did your father live in his lifetime?

A. At Española.

Q. Were you born there?

A. I think so.

Q. Where did your grandfather live?

A. He lived there also.

Q. Do you know where your great-grandfather lived?

A. I have heard it said that he lived at the place called Las Charteles, above Española, on the Santa Cruz River.

Q. Is that east of the Rio Grande?

A. Yes, sir.

Witness excused and plaintiff rests.

For the defendant:

Mr. REYNOLDS. I desire to offer in evidence the title papers in the Plaza Colorado, Plaza Blanca, and Abiquiu grants, showing that Juan Jose Lebato, the grantee in this grant, participated in the execution of those grants, delivered juridical possession to one, and was a witness in another. And I ask that this archive number 943, all that refers
69 to this grant, be translated.

And the Government rests.

For the plaintiff:

FRANCISCO VIGIL recalled.

Examination by Mr. HOWARD:

Q. You said in your evidence this morning that your father had lands at Chama that he owned, but that he lived at Española?

A. Yes, sir; he lived at Española.

Q. What did your father do with those lands at Chama?

A. When I got to the age of reason, he had persons there who had leased the land from him. He also had his sheep and cattle and horses there.

Q. Do you remember when this country became a part of the United States?

A. Yes; I was already old enough at that time to know, but I can not remember the year.

Q. Did your father then have any sheep and cattle there?

(No reply.)

Q. You say that when you got to the age of reason that your father had cattle and sheep on this land. Was that before or after this country became a part of the United States?

A. He kept his peons there and kept his sheep and cattle there.

Q. Was that before or after the country became a part of the United States?

A. Before and after.

70

Cross-examination by Mr. REYNOLDS:

Q. What land have you been talking about?

A. The land that my father had at the Chama River, which belongs now to Samuel Eldodt.

Q. At the time you were a boy were you ever there?

A. Yes, sir.

Q. How old were you when you went up there first?

A. I do not remember, but I was already old enough to know.

Q. None of it was fenced, was it?

A. No, sir.

Q. Cattle and sheep were herding all over that country, weren't they?

A. Yes; up above the place also.

Q. Anybody else herd sheep on it except your father?

A. I did not see other persons. There were other persons at the place who owned sheep also, and they herded them.

Q. Didn't the people of Abiquiú herd their flocks there?

A. The people of Abiquiú did not go to herd their flocks at that place at that time.

Q. At what time?

A. At the time when my father herded his flocks there.

Q. Didn't the people of Plaza Blanca go there?

A. I do not know.

Q. How many times were you up there?

A. Many times.

71

Q. How long would you stay?

A. Sometimes I would stay two days, and sometimes I would get back to the house the same day.

Q. Did your father ever live there?

A. Not with his family.

Q. Had flocks down at Española, didn't he?

A. Yes; they herded in those regions.

Q. How old are you?

A. Sixty years old.

Q. How far is it from Española to this property?

A. I can not state exactly.

Q. You have never heard it stated how far it was?

A. No, sir.

Q. You have been up there time and again?

A. Very many times.

Q. And don't know how far it is?

A. I can't state the particular number of miles.

Q. How long would it take you to go?

A. It would take about two hours, more or less.

Q. On foot or horseback?

A. Horseback.

Q. Did you have to cross a ridge of mountains?

A. There are no mountains on the road.

Q. Were there many people living at Abiquiú when you went up there?

72 A. There were.

Q. Any fences between this place and your father's?

A. There were no fences at that time.

Q. Stock roamed all over that country promiscuously, did it not?

A. Some; not all.

Q. Do you know the west boundary of the place your father owned?

A. A portion of it was the old river.

Q. What was the boundary on the north?

A. The boundary on the north was called Penito at one place?

Q. What was it called at the other?

A. On the other side there were some people who owned lands, and on the other side, still further on, my father had lands.

Q. Is that the best description you can give of that boundary?

A. Yes, sir.

Q. What was the south boundary?

A. An arroyo lying at that place.

Q. The east boundary?

A. The river; so the papers state.

Q. I don't care what the papers state. I want to know what the boundary was when you were out there as a boy—when nobody herded their flocks on it but your father.

A. My father told me that a boundary was the summit of the Vallecito table-land.

Q. Does that take in the pueblo of Abiquiú?

A. No, sir.

73 Q. Which side of the pueblo of Abiquiú would it be, east or west?

A. The summit of the mountain lies that way [indicating southwest] and Abiquiú lies in the other direction.

Q. What is the difference between east and west?

A. East is that way [indicating east] and west is that way [indicating west].

Q. Give the boundary on the west.

A. My father told me it was the same Mesa de Vallecito.

Q. Is that east or west of Abiquiú?

A. The Vallecito table-land lies in that position [indicating on the table] and the town of Abiquiú in this position [indicating at right angles on the table].

Q. Is it east or west of it?

(No reply.)

Q. Give me the north boundary of this claim.

A. The Penito.

Q. Is that north or south of Abiquiú?

A. On the south.

Q. How far?

A. I can not state the distance exactly.

Q. Do you know where Plaza Colorada is?

A. I know it.

Q. Is it north or south of this land?

A. It lies in that direction [indicating northward].

Q. North or south?

74 A. It lies to the north.

Q. Does this land lie north of the Plaza Colorada or does the Plaza Colorada lie north of this land?

A. The Plaza Colorada is to the north and my father's land is in this direction [indicating to the south].

Q. Do you know where the Plaza Blanca is?

A. I know it also.

Q. Does this land lie north or south of the Plaza Blanca?

A. It is not to the north.

Q. What is it?

A. It is in this direction [indicating to the south].

Q. South?

A. On the south.

Q. You are certain it is not east?

A. It is in that direction and the land lies in that direction.

Witness excused,

And the case was closed, with understanding, however, that any depositions taken to-morrow or next day may be filed and considered a part of the record in this cause.

NOTE.—Deposition of Jose Isabel Martinez was taken on behalf of plaintiff the next day, November 21, filed and considered as a part of the record in this cause. Stenographer.

75 I hereby certify that the above and foregoing thirteen pages contain a full, true, and correct transcript of the proceedings had in open court upon the trial of the case of Jose Isabel Martinez, plaintiff, vs. The United States, defendant, No. 140.

That the testimony of those witnesses recorded as speaking in the Spanish language is true and correctly reported as given out by Mr. Eusebio Chacon, official interpreter.

L. F. PARKER, Jr.,

Official Stenographer Court of Private Land Claims.

SANTA FE, NEW MEXICO, February 12, 1894.

76 PLAINTIFF'S EXHIBIT A.

Año de 1744.

Juan Jose Lovato, vecino de la Jurisdiccion de la Villa Nueva de Santa Cruz, sobre que se declare deber subsistir indemne la mrd. de tierras con que se halla en dha. jurisdiccion, como dentro se espresa.

SE. GR. Y CAPN. GRAL.:

Jun. Jph. Lovato natural de este Rno. y vecino de Sta. Cruz, de el Ojo Caliente, en la mejor que haya lugar y a mi dro. convenga ante la grandeza de Usia paresco y digo que por cuanto se digno Usia de haserme merced en nombre de su Magd. (Ds. le ge.) de un sitio de tierra en el Pueblo Colorado en compa. de el Capn. Diego de Torrez y la parte qe. me toco haverla feriado yguorantemente por cuyo motivo se sirvio Usia

de notarlo por realengo y no habiendo llegado a mi noticia lo aya Usa. otorgado a otra persona alguna; como tal realengo y por hallarme totalmente descomodado nuevamente lo registro y suplico a Usa. se digne de otorgarme nueva merzed de dicho sitio bajo de sus propios terminos obligandome al cumplimiento de las leyes reales qe. hablan sobre esta materia por todo lo cual.

A Usa. pido y suplico rendidam'te. se digne de hacerme como llevo pedido de qe. recibire todo bien y merzed el Rl. ausilio en Usa. ymploro y juro en forma no ser mi pedim'to. de malicia y en lo nesso. &a.

(Signed)

JUN. J. P. H. LOVATTO.

En la Villa de Santa Fe capital deste Reyno de Nuevo Mejico en veinte y cuatro dias del mes de Agosto del año de mil setesientos y quar-
enta, yo el Theniente Coron'l. Governador y Cappn. Genl. del dho. Reyno por (S. M. Dios, (roto) bistto este le hube por presentado y en
77 atencion a su contenido, en que dice que por ygnorancia se desiso de la merced que se le habia dado en compañía del Cappn. Diego de Torrez la cual estaba dada por realenga por aber presedido
benta o cambio faltando a lo ajustado de las leyes reales se le prebiene no lo eecute en otra ocasion la que no se le atendera asta la disposicion de maior tribunal y por ahora ordeno y mando a el alcalde Mar. de la Jurisdiccion de la Cañada Dn. Jun. Garza de Mora le ponga en posesion de la dha. merced que se le abia echo con las mismas sircunstancias y forma que tenia en su primera data. Asi lo probei firme y mande con los testigos infrascritos de mi asistencia. actuando por reseatoria a falta de escribano que no lo hay y en el prte. papel por no correr otro, &.

DN. GASPARD DOMINGO DE MENDOZA.
JOSEPH DE PEIRUS.

ANTONIO DE HERRERA.

Posecion.

En house dias del mes de Setiembre deste año de mil seteztos. y cuarenta en cumplimiento de lo mandado en el auto de la buelta yo Dn. Jun. Garcia de Mora alcalde Maor. y Cappn. a guerra de esta jurisdizon. de la Villa Nueva de Sata. Cruz pase al puesto de Abiquiu con testigos de assa. con quienes actuo por reseatoria; y le di la posesion que se me ordena en el Rl. nombre de su Magd. (Ds. le ge.) con las ceremonias acostumbradas bajo de los linderos que se espresan en la anterior merced que pide en compañía del Cappn. Diego Torrez a que me remito para que la pueble segun las reales ordenes prebienen, y que las pueda gozar y goze el susodicho y sus herederos o subsecosores, y para que conste lo firmo con los de mi assa. con quienes actuo como dho es, y ba en el presente papel comun por no correr del sellado en estas partes de que doy fee.

(Signed)

JUAN GARCIA DE MORA.

78 De assa, Pablo Francisco de Villalpando, Marzial Torrez.

Sr. GOVR. Y CAPPN. GRAL:

Juan J. p. h. Lovatto, originario de este reyno y vesino de la jurisdizon de Sta. Cruz de villa neuva, como mejor proseda, ante la grandeza de Usa. paresco y digo: que por quanto el dia treinta del *del* mes de mayo

proximo pasado, llego a mi sitio, y vivienda de Santa Barbara de Chama Dn. Joseph Romo de Vera juez delegado de Usa. para la diligencias de las tierras de el difunto Juan de Maestas, y sin embargo de la justa respuesta que insime a dho. Juez me notifico que dentro de cuatro meses, so la pena de cien pesos despueble diho zitio: y atento a esta repulsa ymplorando la conocida justificacion de Usa.; adjunto con esta hago representacion ante Usa de el titulo de merced y posesion con que justamente poseo dho sitio, haviendose dedusido el registro que de el hize de haberlo anotado, por realengo el Sr. Coronel D. Gervacio Cruzat y Gongora, en el tiempo que governo este reyno como lo mando publicar su Señoria en la dha. jurisdiccion en el tiempo y cuando despojo de dho sitio a los herederos del Cappn. Xptobal Torres por haberlo despoblado antes de dar cumplimiento a las reales ordenansas. Y para que Usa. venga en la inteligencia de el ningun dro, que a dho. sitio puedan alegar los herederos de el referido Mestas fue uno de los testigos de asistencia en la posesion que se le otorgo a el mencionado Torres; de donde sale a razon o que el Pueblo viejo de Chama reconocia dicho Mestas por Pueblo de Abiquiu (como en aquel entonces que pidio heran bastante incognitos estos parajes) o que presto su total consentimiento para que se mercenaran otros vecinos en la distancia de dos leguas poco mas o menos

79 que zitan del referido pueblo de Chama a el mencionado de Abiquiu, en cullo ambito estamos en legitima posesion dies y ocho familias despues de la anotacion y publicacion por dho. Señor Coronel como expresado llevo; con mas que, ni el tiempo que obtubo dho. Torres el mencionado zitio, ni cuando se anoto y promulgo por realengo ni en el tiempo de la poseziones referidas han reclamado, ni dho. Mestas ni sus herederos pues aunque quisieran alegar ygnorancia, los releba la publica vos, y fama. Todo lo alegado, señor, constara autenticamente en el archibo de esta Capital; y cuando por contingencia accidental no se halle ofresco plena informacion pr. todo lo cual y demas que deba alegar y alego y aqui doy por expresado:

A Usa. pido y suplico rendidamente se digne de mandar revocar la repulsa que se me ha yntimado, y asi mismo que los herederos de el referido Mestas, no se yntrometan en violentar mi quietud y justo titulo con que poseo dho. mi sitio, sobre que les acusare ante la justificacion de Usa. los atrasos, daños, menoscabos e inconsecuencias que se me sigan el Rl. auxilio en Usa. ymploro Juro en forma; costas, y en lo nesso. &a.

(Signed)

JUN. J. P. H. LOVATTO.

Sta. Fee, y Junio diez de mil setecientos y quarenta y quatro años. Por presentado con la merced: declarese haver cumplido con lo mandado, y pongase con los autos de la materia los que se traigan vistos para determinar en justicia lo que hubiere lugar, y asi lo probei mande y firme, actuando por receptoria, a falta de Escribano Real, y Publico que no lo hay en este Reyno, con los testigos de mi asistencia. &a.

(Signed)

JOACHIN CODALLOS Y ROBAL.

To,

ANTONIO ARAMBURU.

To,

DN. FRANCO. DE ROA Y CARRILLO.

Auto definitivo.

En la villa de Santa Fe, en quince dias del mes de Junio de mil setecientos y quarenta y quatro años el Sargento maior Dn. Joaquín Codallos y Rabal, Governador y Capitan General de este Reino de la Nueva Mejico; Habiendo visto estos auttos, la merced hecha a Juan Joseph Lovatto vecino de la jurisdiccion de Santa Cruz de la Villa Nueva, por el Theniente Coronel Dn. Gaspar Domingo de Mendoza, Governador que fue de este Reyno su datta el dia veinticuatro de Agosto del año de setecientos y quarenta firmada de su mano, y de los testigos de su asistencia. Vista asimismo la posesion que de dhas tierras le dio Dn. Juan García de Mora Alcalde Mayor, y Capitan General de la Jurisdiccion de la villa nueva de Santa Cruz, sin impedimento ni contradiccion alguna de los linderos que en ella se expresan que autoriso dicho alcalde mayor con los testigos asistencia con lo demas que veer convino. Fallo atento a lo cual debe de subsistir permanente dicha merced de las tierras de su contenido y el dicho Juan Jose Lovatto amparado en posesion y propiedad de ellas, como habidas y adquiridas con justo y derecho titulo, por si y sus herederos y subesores que se les fueron conforme a derecho: Y mando que ningun justicia ni persona particular le despoxe ni perjudique pena de cien pesos y no se inculque lo assi determinado, ni se admita recurso sobre ello, por escrito o de palabra de bajo de la misma pena; Y assi provei, mande y firme definitivamente juscando, estando haciendo ausencia, cedente pro tribunali en este superior gobierno actuando los testigos de mi asistencia a falta de escribano que no lo hay en Reino, doy fee.

JOACHIN CODALLOS Y RABAL.

Year 1744.

Juan Jose Lovatto, citizen of the jurisdiction of Villa Nueva de Santa Cruz, in relation to declaring that the grant of lands which he has in said jurisdiction should continue subsistent as within set forth.

SIR GOVERNOR AND CAPTAIN GENERAL:

I, Juan Jose Lovatto, a native of this kingdom and citizen of Santa Cruz del Ojo Caliente, in the best form in use and befitting my right, before the highness of your excellency appear and state, that whereas your excellency was pleased to make to me a grant in the name of his majesty (God preserve him) of a sitio (tract) of land at the place the Pueblo Colorado, in company with Captain Diego de Torres, and I having ignorantly exchanged the part that came to me, for which your excellency was pleased to annotate the sitio as royal domain, and it not having come to my notice that your excellency may have granted it to some other person as such royal domain, and finding myself totally destitute I register it de novo, and pray your excellency to be pleased to execute to me a new grant for the said sitio under its own boundaries, I binding myself to a compliance with the royal laws which provide concerning this matter.

I humbly ask and pray your excellency that you deign to do as I have now requested whereby I will receive full favor and grace. In your excellency I implore the royal aid, and I aver in form that this my petition is not in malice and whatever is necessary, etc.

JUAN JOSE LOVATTO.

At the village of Santa Fe, capital of this kingdom of New Mexico on the twenty-fourth day of the month of August of the year one thousand seven hundred and forty, I, the lieutenant colonel, governor and captain-general of the said kingdom for His Majesty (God preserve him), having examined this, treated it as presented, and, in attention to its contents, in which he says that from ignorance he disposed of the grant which had been given to him in company with Captain Diego de Torres, which grant is held to be royal domain, sale or barter having preceded disregarding the wisdom of the royal laws; he is cautioned not to do this on another occasion, on which he will not be heard till the disposition of a higher tribunal, and for the present I order and command the chief alcalde of the jurisdiction of the Cañada, Don Juan Garcia de Mora, to put him in possession of the said grant which had been made to him, with the same conditions and form which he had under his first date.

Thus this I provided, signed and commanded, with the undersigned witnesses of my attendance, acting by commission pleno jure, for lack of a notary, for there is none, and upon this paper, there being no other.

DON GASPAR DOMINGO DE MENDOZA.

ANTONIO HERRERA.

JOSE DE TERRUS.

Possession.

On the eleventh day of the month of September of this year one thousand seven hundred and forty, in execution of what is commanded in the foregoing mandate, I, Juan Garcia de Mora, chief alcalde and war captain of this jurisdiction of Villa Nueva de Santa Cruz, proceeded to the place Abiquiu with attending witnesses with whom I act by appointment, and I gave him the possession which I am commanded in the royal name of His Majesty (God preserve him) with the customary ceremonies, under the boundaries which are stated in the preceding grant which he asked in company with Captain Diego Torres, to which I refer, so that he may settle it as the royal ordinances prescribe, and that the
83 aforenamed and his heirs or successors can enjoy and may enjoy the same.

And that it may so appear I signed this with those of my attendance with whom I act as aforesaid. And it goes on this common paper, as that of the stamped does not appear in these parts, to which I certify.

JUAN GARCIA DE MORA,

As Special Justice.

Attending: Pablo Francisco de Villalpando, Marcial Torres.

SIR GOVERNOR AND CAPTAIN GENERAL:

I, Juan Jose Lovatto, native of this kingdom and resident of the jurisdiction of Santa Cruz de Villa Nueva, as I may best proceed, before the highness of your excellency appear and state, that whereas on the thirtieth day of the month of May last past Don Jose Romo de Vera, a justice appointed by your excellency for the proceedings concerning the lands of the deceased Juan de Mestas arrived at my farm and *and* dwelling house (sitio y vivienda) Santa Barbara de Chama; and, notwithstanding the just response which I gave the said justice, he notified me to

vacate the said sitio within four months, under the penalty of one hundred dollars; and, mindful of this repulse, imploring the known rectitude of your excellency, I in connection herewith make exhibit before your excellency of the title under which by grant and possession I justly possess said sitio and the abstract thereof which I made therefrom having been deduced that Colonel Don Gervacio Cruzat y Gongora in the time he governed this kingdom and annotated it as royal domain, as his excellency commanded he proclaimed in the said jurisdiction at the time and when he deprived the heirs of Captain Cristobal de

84 Torres of said sitio for having vacated it before fulfillment of the royal ordinances; and that your Excellency may come into the knowledge of the entire want of right to my said sitio which the heirs of the said Mestas may allege; he was one of the attending witnesses in the possession which was executed to the said Torres, whence it comes to reason, either that the said Mestas recognized the old pueblo of Chama as the pueblo of Abiquiu (for at that time when he applied these places were quite unknown), or that he gave his entire consent that to other citizens might be granted within the distance of somewhat more or less than the two leagues it is called from the said pueblo of Chama to the said pueblo of Abiquiu, in which space, we, eighteen families, are in lawful possession since the annotation and publication by the said colonel as I have stated; furthermore, neither at the time that the said Torres obtained the said sitio, nor when it was annotated and proclaimed royal domain, nor during the time of the possession referred to, have either the said Mestas or his heirs claimed, for, though they might wish to plead ignorance, the public voice and reports contradict them. All that is alleged, sir, will appear authentically in the archives at this capital; and if by fortuitous chance it shall not be found I offer full information, for all of which and the rest that I ought to allege and do allege and do here give as expressed. I humbly ask and pray that your Excellency deign to command that the repulse which has to me been intimated be revoked, and so also that the heirs of said Mestas shall not interfere by violating my tranquility and the just title with which I possess my said sitio; regarding which I shall charge them before the rectitude of your Excellency with the arrearages, damages, losses, and misrepresentations which may follow me. The royal favor in your Excellency I implore. I acknowledge in form the costs and whatsoever is necessary, etc.

JUAN JOSE LOVATTO.

85 Santa Fe, June tenth, year one thousand seven hundred and forty-four. As this is presented with the grant, which it demonstrates, be it declared that he has executed what was commanded, and it will be placed with the mandates in the matter, those which may have been examined, so as to determine in justice what shall be proper. Thus this I provided, commanded, and signed, acting judicially for lack of a notary, royal or public, for there is none in this kingdom, with the witnesses of my attendance, &c.

JOAQUIN CODALLOS Y RABAL.

Witness:

FRANCISCO DE ROA Y CARRILLO.

Witness:

ANTONIO ARAMBURU.

Final decree.

At the village of Santa Fe, on the fifteenth day of the month of June, year one thousand seven hundred and forty-four, I, Sergeant-Major Don Joaquin Codallos y Rabal, governor and captain-general of this kingdom of New Mexico, having examined these mandates, the grant made to Juan Jose Lovatto, citizen of the jurisdiction of Santa Cruz de Villa Nueva, by Colonel Gaspar Domingo de Mendoza, governor as he was of this said kingdom, its date the twenty-fourth day of August of the year ^{seven} hundred and forty, signed with his hand and by the witnesses of his attendance, having examined likewise the possession which Don Juan Garcia de Mora, chief alcalde and war captain of the jurisdiction of Villa Nueva de Santa Cruz, executed to him for said lands without any impediment or objection, under the boundaries which are therein expressed, and which said chief alcalde authenticated with his attending witnesses, together with all else it was requisite to examine, I decide, considering

the premises, that the said grant for the lands within its boundaries
86 ought to continue permanently subsistent, and the said Juan Jose

Lovatto be protected in possession and dominion of them as had and acquired, with just and lawful title for himself and his heirs and successors who shall be such conformably to law; and I command that no magistrate or private person shall despoil or injure him under penalty of one hundred dollars; and what is thus determined shall not be questioned, nor shall recourse therefrom, in writing or by word, be allowed, under the same penalty.

And thus I provided, commanded, and signed, adjudicating definitively and forming a granting "audiencia" pro tribunali in this superior government, acting with the witnesses of my attendance for want of a notary, for there is none in this Kingdom, I certify.

JOAQUIN CODALLOS Y RABAL.

The balance of this last document is so mutilated and worn off, probably by age and handling, that it is impossible to make out the names of the witnesses therein referred to.

MILLER, *Translator.*

SURVEYOR-GENERAL'S OFFICE,

Santa Fe, New Mexico, June 25, 1884.

The foregoing eight pages contain a true translation made by me from the original, in Spanish, on file in this office in Private Land Claim File No. 198, in the name of Juan Jose Lovatto.

Santa Fe, , 1893.

I hereby certify that the above and foregoing contains a true and correct copy of the original translation on file in my office in Private Land Claim File No. 198, in the name of Juan Jose Lovatto.

Surveyor-General.

87

(Copy.)

PLAINTIFF'S EXHIBIT B.

Being at this new village of Santa Cruz, I, Francisco Ortiz, chief alcalde and war captain of all this jurisdiction, on the third day of the

month of November, seventeen hundred and forty-seven years, appeared before me Captain Joseph Lovato, resident of the village of Santa Fe and resident of this jurisdiction, and stated that he sold and in effect did sell to Bentura de Mestas, resident of this jurisdiction, to wit, a body of land that he acquired by grant and royal possession at the place of Santa Barbara of Chama, which boundaries are on the east by lands of said Mestas, on the north by a cross and mound near the Serro Colorado, on the west the Black Hill (Serro Negro), with the surplus of the near residents up to the direction of the Ojito of Santo Domingo, which is vulgarly called the Sastre, and on the south _____, and he acknowledged to have received for said land the sum of six hundred dollars current money to his _____ and if it be worth more he grants and donates him the over-value purely, merely, perfectly, and irrevocably, that the right calls while living, and grants it to him free of tax, tribute, or mortgage, the said possession, that he may enjoy it with free and general administration, that he may exchange it, sell it, or alienate it, for which he renounces _____ said Mestas the royal and personal action that he had to said land, and in the same manner renounces _____ said Mestas the royal personal action he had to said land, and also renounces the reception of four years de duobus bendi and other emperors, Justiniano Bellelano, Toro and Partida in general, that he may not bring suit _____ nor contradiction by myself, his children, heirs, or successors, and if they should bring it be not heard in court or out of court, for the compliance of which _____ he submits in this case to the royal justices of his Majesty, with 88 the consent of his wife and children that he may be compelled _____ as if by sentence pronounced by competent judge without appeal _____ before me at the request of the grantor _____ that it may appear I signed with my attending witnesses _____, there being no copy of distances provided on said day, month, and year ut supra.

JOSEPH FRANCISCO ORTIZ,
Acting Justice.

JUAN JOSEPH LOVATO.
JUAN DOMINGO LOVATO.
MARCIAL TORRES.

VILLAGE OF LA CAÑADA, July 28th, 1758.

Having seen the sale contained in the preceding page, I confirm and revalidate the same. I, Tomas Velez Cachupin, governor and captain general of New Mexico and castillian of the royal garrison, it being understood in general, which I signed with my appointed secretary.

TOMAS VELEZ CACHUPIN.

By command of the governor.

89 Estando en esta villa nueva de S^{ta} Cruz yo Dⁿ Fran^{co} Ortiz, alcalde mayor y capⁿ a guerra de toda esta jurisdizion en tres dias de el mes de noviembre de mill setezientos cuarenta y siete años, compareció por ante mí, el Capⁿ J [torn] Joseph Louatto, vezino de la villa de S^{ta} Fee, y residente [torn] esta jurisdizion y dixo: que bendia y con efecto bendió, a Bentura de Mestas, vezino de esta jurisdizion es a saber vn zitie que hubo p^r Merzed y posez. real en el puesto de Santa Barbara de chama cullos linderos son por el oriente con tierras de dho.

Mestas por el norte vna cruz y mojonera ymmediata al Zerro Colorado, por el poniente el Zerro Negro con las sobras de los vezinos ymmediatos hasta la derezera de el ojito de S^{ro} Domin [torn], vùlgarmente llaman de el Sastre y p^r el sur [torn] dicho zitio confiesa ha dho. Mestas la cantidad de seis sien [torn] pesos corrientes de la tierra a toda su [torn] y que si mas bale ó baler pueda le aze gracia y donazion pura mera perfecta e irrevocable q^e el derecho llama interuiuos y se las da libres de zenzo, tributo hypoteca ó semejante penzion para q^e las gose con libre y general administrazion y pueda cambiarlo benderlo ó enagenarlo para lo cual renuncia dho. Mestas la aucion real y personal q^e [torn] a dho. zitio tenia como assi mismo renu [torn] la resepcion de los quatro añ^{os} para pedir [torn] de el justo precio con la ley de duobos bendi y demas de los emperadores Justinia [torn] lellano Toro y partida con la general [torn] cho Sobre que no le pondrá pleyto de [torn] ni contradizion por si sus hijos he [torn] ni subesores y que si se lo pucieran no se [torn] En juizio ni fuera de el para cullo cum [torn] to se somete en esta causa a las R^{as} justic [torn] de su magestad p. cer Combeneplacito [torn] su [torn] ger e hijitos para que a ello lo apremien [torn] lan como si fuera por sentencia
90 [torn] de jues competente sin apelazⁿ todo [torn] p^r ante mi q^e de pedimento del otorg^{te} [torn] la autoridad ju [torn] pressado conste lo fir [torn] testigos de mi ass. Con [torn] p^r no hauer copia de [torn] distancias preunidas p^r der [torn] dicho dia mes y año vt supra de que doy [torn]
F.

FRANC^{co} ORTIZ.

[Rúbrica.]

JUAN R^{tor}.

JUAN JOSEPH LOUATTO. [Rúbrica.]

T^{te}.

MARZIAL TORRES. [Rúbrica.]

T^{te}

JUAN DOMINGO LOUATTO. [Rúbrica.]

VILLA DE LA CAÑADA, 28 de julio de 1751.

Vista la escrip [torn] de venta que en la foja antecedente se contiene; se la confirmo, y revalido yo D^{no} Thomas Velez Cachupin, gov^{or} y capitan gen^l de esta R^{na} de la nueba Mexico y Castellano de su R^l presidio estando entendiendo en su general visita, que firme con mi secretario nombrado de ella.

M.

VELEZ. [Rúbrica.]

Por m^{do} del S^r Gouver.

M [torn].

91 PLAINTIFF'S EXHIBIT C.—*Testimony of Juan Gallegos, taken before surveyor-general.*

JUAN GALLEGOS, of lawful age, having been first duly sworn, deposeth and saith:

Ques. State your name, age, occupation, and place of residence.

Ans. My name is Juan Gallegos, am sixty-five years old and a farmer, and reside at Santa Cruz de Canada, Rio Arriba County, Territory of New Mexico.

Ques. Are you acquainted with the land bounded on the north by the Sierra de las Grullas, on the east by the old pueblo of Chama, on the south by the Sierra de Santa Clara, and on the west by the ascent or Piedra Lumbre, in the county of Rio Arriba, Territory of New Mexico?

Ans. I am.

Ques. How long have you known this tract?

Ans. I think ever since I was fifteen years old.

Ques. By whom and under title or claim has the said tract been occupied since you have known it?

Ans. By the settlers that live there now and their ancestors, and they claimed title under some grant.

Ques. Do you know the petitioners in this case, Ysabel Martinez and Gabriel Archuleta, and where do they reside?

Ans. I do, and they reside on the land in question, in Rio Arriba County.

Question by SURVEYOR-GENERAL:

Ques. Do you know that any grant was ever made to the land embraced within the boundaries referred to, or that such a grant exists?

Ans. I do not.

Ques. How long have the petitioners, Martinez and Archuleta, lived there?

92 Ans. I know of their living there for the last forty-five years.

Ques. Then you don't know whether they claim under a grant or are mere squatters on public land, do you?

Ans. I only know they are settlers there, but don't know how they claim title.

JUAN GALLEGOS.

Subscribed and sworn to before me this April 2d, 1884.

H. M. ATKINSON,
Surveyor-General.

The surveyor-general adjourned court until to-morrow afternoon at two o'clock, when Jose Ysabel Martinez was sworn by the surveyor-general and questioned by Mr. Knaebel; same attendants.

Question. What is your name, age, occupation, and residence?

Answer. My name is Jose Isabel Martinez; my age is sixty-two or three years; my occupation is farmer, and I reside at the Vega de Lovato.

Q. State whether you reside within the limits of the tract of land in question here.

A. I do reside within them.

Q. Describe the land in question here and state how long you have lived upon it.

A. The boundaries are on the south the Santa Clara Mountain, on the west the Cuesta de la Piedra Lumbre, on the north the Sierra de las Grullas, and on the east the old pueblo of Chama. I have lived on the land since 1843.

Ques. State whether you are one of the petitioners in this case and whether you have held any public office in your county.

Ans. I am one of the petitioners, and I have been a justice of the peace for a number of years in my precinct, and am now justice of

THE GOVERNOR AND CAPTAIN-GENERAL:

The retired ensign, Cristobal Torres, resident of the jurisdiction of the new town of Santa Cruz, appears before your excellency in due form of law, and as my interests require, and state that, having a large family and the place where I live being limited, and as it will not hold them because limited, and as I have no place upon which to plant sufficient to support all of them, and there being a tract of land in the pueblo of Chama, as far as a hill (cuesta) as one goes up to Piedra de Lumbre, which is from east to west and from north to south with the Santa Clara and Las Grullas mountains, which I register as royal, untitled, and unsettled lands, with the intention of building a house upon them and farming them for the purpose I have stated of supporting my very large family, and if, because of the employment I now obtain as a soldier, I cannot settle them for any legitimate cause or motive in the time prescribed by royal law, I ask and pray your excellency to be pleased to allow me more time that I may not be prejudiced; and therefore I ask and pray your excellency to deign to grant me said tract in the manner and for the reasons I have stated, from which I shall receive benefit, and that royal possession be given me under the boundaries I mention by the person your excellency may be pleased to order to give it to me in the name of His Majesty (whom God preserve). I formally swear there is no bad faith and what is necessary, etc.

CRISTOBAL TORRES. [Rubric.]

In the town of Santa Fe, on the 6th day of the month of June, 1724, before Don Juan Domingo de Bustamante, governor and captain-general of this kingdom, the petitioner therein presented it, and when examined by me I admitted it, and I grant him the lands he asks for, in the name of His Majesty, for himself, his children, and heirs, and my lieutenant-general will proceed to give him possession in the name of the King, our Lord, and this grant will serve him as sufficient title to enable him to hold said lands peaceably and quietly, and in witness thereof I signed it.

JUAN DOMINGO DE BUSTAMANTE. [Rubric.]

In this depopulated town of Chama on the 9th day of the month of June, 1724, I, General Juan Paez Hurtado, lieutenant of the governor and captain-general of this kingdom, in compliance with the above order of the 6th instant, came to said place, bringing with me Juan de Mestas, to the end that if he had anything to say in regard to this possession he could state it so as to be heard, as a matter of justice. He told me that I could proceed to give said possession, as it damaged him in nothing in that which he had taken the day before, in view of which I took said Ensign Cristobal Torres by the hand and led him over said tract. He threw stones, plucked grass, and shouted in demonstration of possession, which I gave him in the name of His Majesty, with the entrances and exits, pastures, waters, drinking places, uses and customs,

95 rights and servitudes, designating boundaries and monuments, which are the same as those he expresses in his petition, the witnesses to the minutes of said possession being Juan de Mestas, Diego de Torres, and Joseph Montoya, and my attending witnesses, the undersigned, who signed it with me acting ex officio on said day. Before me ex officio.

JUAN PAEZ HURTADO. [Rubric.]

Witness:

FRANCISCO MONTES VIGIL. [Rubric.]

Witness:

MIGUEL DE QUINTANA. [Rubric.]

In the town of Santa Fe, on the 22nd day of the month of January, 1726, the retired ensign, Cristobal de Torres, presented to the governor and captain-general the grant of the lands he owns, which, when examined by his excellency, he declared to be sufficient, and for greater security revalidated it in due form. He so decreed, ordered, and signed before me, the present civil and military secretary.

JUAN DOMINGO DE BUSTAMANTE. [Rubric.]

By order of the governor:

ANTONIO DE GRUCIAGA, [Rubric.]

Civil and Military Secretary.

Conveyance from Cristobal Torres, his wife, Angela de Leiva, and son, Diego Torres, to Juan Lujan, of a house lot, corral, and a garden tract.

Dated: Puesto de Chama, January 15, 1726.

96 The boundaries are: "On the east, lands of said Diego Torres, and on the south, lands of Captain Joseph Trujillo; on the west, the edge of the river, and on the north, lands of Nicolas George. Another piece of farming land sufficient for planting one fanega of corn, a little more or less, and its boundaries are: On the east, a monument and lands of said Ensign Cristobal Torres; on the west, a monument and lands of said Captain Joseph Trujillo; on the south, the edge of the river; on the north, some hillocks. We also give him, in the uncultivated lands, an equal interest with the others. There is adjudicated to him only what he is cultivating, receiving my deed, so that there will be no confusion at any time, but that all the settlers may enjoy it equally; and said land which we adjudicate to him can not be sold to any of the settlers of said tract for other persons."

Will of Cristobal Torres, dated San Joseph de Gracia de Chama, December 9, 1726.

"First, a grant of land for farming and for raising large and small stock at the place of Chama, and it is his will that said grant be partitioned, in equal parts, both to those who have actually settled and to those who may wish to settle hereafter.

"Item. Another grant of lands in the cañada, in which he has assigned to his children their portions, the part to which each one is

entitled; and it is understood that he leaves the house to his wife, as well as the other new house built on the ranch at Chama, composed of a parlor, a living room, and a pantry."

97 Will of Angela de Leiva, widow of Cristobal Torres, dated new town of Santa Cruz, March 22, 1727.

"Item. I declare that I have a ranch in the Cañada. My executor knows that said ranch is mine.

"Item. I declare that I have a house at San Joseph de Gracia de Chama, which has a parlor, a living room, and a pantry.

"Item. I declare that I have five pieces of land, together with said house. My executor knows of them."

THE GOVERNOR AND CAPTAIN GENERAL:

I, Juan Lujan, a resident of this jurisdiction of La Cañada, appear before your excellency in due form of law and as my interests require and state: That, whereas your excellency was pleased to notify the persons against whom complaint is made by Lieutenant Diego Torres, in relation to a tract of land which his deceased father, Ensign Cristobal Torres, acquired by virtue of a grant, which is above the place of Chama, and in order to settle it he gave a part and adjudicated a right in it to the persons he mentions in his petition. I, being one of them, in respect to what relates to me, present to your excellency the juridical donation which said deceased and his wife, and said Diego Torres, executed in my favor, dated January 15, 1726. Relying upon its conditions and circumstances, I ought not and do not cede the part adjudicated to me, for it is stated therein that if at any time suit or opposition is brought against me they be not heard in court or out of it, which I allege in my favor, as well as the fact that they waived all laws, which now can not be favorable to them for any right; and the more so when his own petition

98 favors me, for I lived upon it with the aforesaid term of three years, if not personally, by a third person, who planted there, built a house, and constructed corrals and kept my stock on said tract; and after said time my son, Juan Estevan Garcia, has been there two winters and one summer with my stock, holding said tract; and the same reason the others had for abandoning it, namely, the enemy, I had, and that same clause is in my favor, and for said reasons and for what the said donation states, I ought not to lose the action and right I have acquired to settle it hereafter, as I may be able, or to sell it to some other person or persons not of the body specified in said donation, upon which I rely, as also upon the petition presented by said Diego Torres, which sets out the same circumstance; and that I have been settled upon it the time I have stated I will furnish proof by said Diego Torres and the others, and therefore ask and pray you with the greatest humility and veneration to be pleased to hear me in justice, which I expect, from the great amount you distribute; and I swear in due form that my allegation is not in bad faith, and in what is necessary, etc.

JUANA LUJAN. [Rubric.]

In the town of Santa Fe, on the 28th day of the month of September, 1731, I, Colonel Gervacio Cruzat y Gongora, governor and captain-general of this Kingdom of New Mexico, for His Majesty, admitted it after

examination and in view of what this party states in her communication, I ought to order and did order that it be referred to the adverse party, Diego de Torres, and he aggregated to the proceedings, together with the communication he presents. I so provided, ordered, and signed with my attending witnesses, acting ex officio in default of a public or royal notary, there being none in this Kingdom.

DON GERVACIO CRUZAT Y GONGORA. [Rubric.]

CASPER BITTON. [Rubric.]

JUAN ANTONIA DE UNANUE. [Rubric.]

I, Lieutenant Diego Torres, appear before your excellency, and, in reply to what Juana Lopez states in this petition, which your excellency was pleased to refer to me, request that as the intention of the King is that tracts of land be settled by the persons to whom they are donated, your excellency be pleased to compel the aforesaid, with all the force of law, not to keep it uncultivated and abandoned, as she has, since the month of April of this present year, for, although she says she built a house, it was only a hut (jacal) in which she had a servant who remained there about a year, it being, as is reasonable, a convenience to keep her stock during the winter, and others do it for their own convenience without being settlers; therefore, if this tract was given to them under the conditions of building houses and living there with their families, why should they not do so and not keep their stock there during the winter only, as I have stated? For all of which I ask and pray your excellency with all humility to be pleased to administer justice as I have requested. I swear that this, my petition, is not in bad faith and in what is necessary, etc.

100

DIEGO TORRES. [Rubric.]

THE GOVERNOR AND CAPTAIN-GENERAL:

I, Captain Joseph Truxillo, a resident of the Cañada of the new town of Santa Cruz, in the best manner the law permits, appear before your excellency and state: That, whereas your excellency was pleased to refer to the parties who were obligated to settle the tract granted to Ensign Cristobal Torres (may he be with God), relying on the same points presented in this matter by Lieutenant Diego de Torres, I state, as one of the parties in interest, that the same are and operate in my favor, for the same reason they had for abandoning it I had, and greater reason, because the hostile Utes carried off twenty-two broken mares belonging to me from said tract, wherefore, having lost my little and having lived on it three years, as he alleges, I am entitled to the part that was allotted to me to settle it or sell it, as time should determine it, for any donation made under the conditions alleged in said petition is always in force and effect, and the parties in interest as the principal part of their settlement or hamlet can not be driven off. And thus, in view of the allegations herein, I ask and pray your excellency, with all humility and veneration, to be pleased to hear me in justice (for I give information by the parties of what I have alleged) from the large amount your excellency distributes, and I swear in due form that this my statement is not in bad faith and in what is necessary, etc.

JOSEPH TRUXILLO. [Rubric.]

101 In the town of Santa Fe, on the 5th of October, 1731, I, Colonel Don Gervacio Cruzat y Gongora, governor and captain-general of this kingdom of New Mexico for his Majesty, admitted it after examination, and in view of what this party states, I ought to order and did order that it be referred to the adverse party, Diego de Torres, and that it be aggregated to the proceedings in the matter. Thus I provided, ordered, and signed it with my attending witnesses acting ex officio in default of a royal or public notary, there being none in this kingdom.

DON GERVACIO CRUZAT Y GONGORA. [Rubric.]

GASPAR BITTON. [Rubric.]

JUAN ANTONIO DE UNANUE. [Rubric.]

GOVERNOR AND CAPTAIN-GENERAL:

I, Lieutenant Diego Torres, appear before your excellency and in reply to the reference made to me of the allegation stated, request that your excellency be pleased to compel the petitioner, Joseph Truxillo, to settle the tract or cede his right in order that another may come in and settle it, and, in regard to the statement he makes about the mares, it is my duty to bring to your notice the fact that he has not lost the number he mentions and I offer proof that most of them returned to him. For all of which I ask and pray your excellency, with all humility, to be pleased to administer justice as I have requested, and I swear this, my petition, is not in bad faith and in what is necessary, etc.

DIEGO TORRES. [Rubric.]

102 The GOVERNOR AND CAPTAIN-GENERAL:

I, Bartolome Truxillo, a resident of the jurisdiction of Chama, in the place of San Joseph de Gracia, appear before your excellency, in due form of law and as my rights require, and state that for a year and two months I have been a settler at said place of San Joseph by virtue of a donation given me verbally by the deceased Cristobal Torres, my father-in-law, to whom it was granted in the name of His Majesty, and inasmuch as different residents of the jurisdiction of the new town of Santa Cruz have donations at said place, such as Joseph Truxillo, my father, Cristobal Tafaia, junior, Juana Lujan, Nicolas Jorje, Francisco Truxillo, Antonio de Sandoval, and Joseph Madrid, now deceased, your excellency will be pleased to order the aforesaid individuals to settle it within the time prescribed by law, and if they do not do so, I ask and request your excellency to be pleased to adjudicate it to us, the heirs of said deceased Cristobal Torres, for the grant was made to him on condition that they settle it as heirs and in case the latter do not desire to settle it your excellency will be pleased to grant said place to me in the name of His Majesty, as it has been settled the time I have stated, because I cannot take out ditches and cultivate lands unless they are my own.

I ask and pray your excellency, with all humility, to be pleased to provide and order as I have requested, as I shall thereby receive benefit and grace, and I swear, in due form, that this, my petition, is not in bad faith and in what is necessary, etc.

BARTOLOME TRUXILLO. [Rubric.]

103 In the town of Santa Fe, on the 11th of the month of November, 1731, I, Colonel Don Gervacio Cruzat y Gongora, governor and captain-general of this kingdom of New Mexico, after examination admitted it, in so far as permitted by law, and I ought to order and did order that this petition be aggregated to the proceedings in the matter. I thus provided, ordered and signed it with my attending witnesses, in default of a royal or public notary, there being none in this kingdom.

DON GERVACIO CRUZAT Y GONGORA. [Rubric.]

GASPAR BITTON. [Rubric.]

JUAN ANTONIO UNANUE. [Rubric.]

In the town of Santa Fe, on the 11th day of the month of December, 1731, I, Colonel Gervacio Cruzat y Gongora, governor and captain-general of this kingdom of New Mexico and its provinces: Whereas, in my decree, made on the 29th of August of this present year of 1731, I have ordered referred to the parties in interest the communication presented by Lieutenant Diego de Torres, in this superior government, in regard to the settlement of the lands which Alférez Cristobal de Torres allotted to them in the territory of the place of Chama and, as some of the parties have not appeared to make answer to said communication, I ought to order and did order that Cristobal Tafoia, junior, Nicolas Jorje, Antonio Sandoval, Joseph de Madrid, or his heirs, and Francisco Truxillo, make answer to said communication within the term of nine days after notification of this order, entering at the foot thereof a
104 minute to the effect that they had been notified, in order to take such procedure as might be just. Thus I provided, ordered, and signed it, with my undersigned attending witnesses, in default of a royal or public notary, there being none in this kingdom.

DON GERVACIO CRUZAT Y GONGORA. [Rubric.]

GASPAR BITTON. [Rubric.]

JUAN ANTONIO UNANUE. [Rubric.]

At the new town of Santa Cruz, on the 17th day of the month of December, 1731, I, Francisco Bigil, lieutenant of the chief alcalde of this new town of Santa Cruz and its jurisdiction, in compliance with the above order, caused to appear Nicolas Jorje and the widow of Joseph Madrid, who are in the jurisdiction, and to whom I gave notice of said order, who, when they had heard and understood it, said they would make answer within the term set for them, and in witness thereof I signed it, as ex officio judge, with my attending witnesses on said day, month, and year, and they did not sign it because they did not know how.

FRANCISCO VIGIL, [Rubric.]

Ex officio Judge.

JOSEPH GOMEZ. [Rubric.]

Witness:

MIGUEL QUINTANA. [Rubric.]

105 At the town of Santa Cruz, on the 31st day of the month of December, 1731, I, Francisco Erjil, lieutenant of the chief alcalde of this new town of Santa Cruz and its jurisdiction, having given notice

of the above-mentioned order of the governor to Nicolas Jorge and Antonio Sandoval and the widow of Joseph Madrid, answer was made by Nicolas Jorge and Antonio Sandoval, but the widow of Joseph Madrid made no answer, and I forward them to the governor, that his excellency may, in view thereof, order what is most convenient and just, and in witness thereof I signed it as *ex officio* judge with my undersigned attending witnesses.

FRANCISCO VIGIL, [Rubric.]
Ec Officio Judge.
 MIGUEL DE QUINTANA. [Rubric.]

Witness:

JOSEPH GOMEZ. [RUBRIC.]

The CHIEF ALCALDE AND WAR CAPTAIN:

I, Cristobal Tafoya, junior, a resident of this Cañada of the new town of Santa Cruz, in due form of law appear before you and state: That whereas you have notified me of an order made by the governor and captain-general in favor of Bartolome Truxillo in regard to the lands which his deceased father, Captain Cristobal Torres, gave to me and designated within the settlement of the Chama, in so far as concerns me, I relinquish said part for which no donation in writing was given me, and, in order that the governor may determine as to them, I give this reply, which I signed, etc.

CRISTOBAL TAFOYA. [Rubric.]

106 At the new town of Santa Cruz, on the 17th day of the month of May, 1732, the petitioner presented it to me, Captain Juan Estevan Garcia de Noriega, chief alcalde and war captain of this jurisdiction, and I admitted it after examination, and it is aggregated to the proceedings in the matter, and in witness thereof I signed it as *ex officio* judge, with my two attending witnesses, on said day, month, and year, *ut supra*.

JUAN ESTEVAN GARCIA DE NORIEGA. [Rubric.]
 JUAN DE DIOS MARTIN. [Rubric.]
 MIGUEL MARTIN SERRANO. [Rubric.]

The LIEUTENANT OF THE CHIEF ALCALDE:

I, Nicolas George, a resident of La Cañada, appear before you in due form of law and as my interests require, and state: That whereas I have apprised myself of the contents of an order of the governor, about which you notified me, concerning the lands which Ensign Cristobal de Torres (may he be with God) donated to me above Chama, I relinquish them, and the donation he made to me in writing is in the possession of Lieutenant Diego Torres, that the governor may determine as to them in accordance with the petition made by Bartolome Truxillo, and I swear in due form that this, my answer, is not in bad faith and in what is necessary, etc.

NICOLAS GEORGE. [Rubric.]

107 In the new town of Santa Cruz, on the 22nd of December, 1731, the petitioner therein presented it to me, Francisco Bigil, lieutenant of the chief alcalde, and I admitted it after examination and

forward it to Colonel Don Gervacio Cruzat y Gongora, governor and captain-general of this kingdom, that his excellency may upon examination make the orders that are most convenient. And in witness thereof I signed it with my undersigned attending witnesses on said day, month, and year, ut supra.

FRANCISCO VIGIL, [Rubric.]
Ex Officio Judge.

FRANCISCO BALDES. [Rubric.]
JOSEPH GOMES. [Rubric.]

THE LIEUTENANT OF THE CHIEF ALCALDE:

I, Antonio Sandoval, a resident of the place of Embudo, appear before you, in due form of law and as my interests require, and state: That whereas I have informed myself of the contents of an order of the governor and captain-general, of which you gave me notice, in relation to the lands which Lieutenant Diego Torres had donated to me above Chama, I relinquish them that the governor may determine as to them in accordance with the petition made by Bartolome Truxillo, and I swear in due form that this, my answer, is not in bad faith and is what is necessary, etc.

ANTONIO DE SANDOVAL. [Rubric.]

In the new town of Santa Cruz, on the 22nd of December, 1731, the party presented it to me, Francisco Bigil, lieutenant of the
108 chief alcalde, and I admitted it after examination and forward it to Colonel Gervacio Cruzat y Gongora, governor and captain-general of this kingdom, that his excellency may, in view thereof, make such order as may be convenient, and in witness thereof I signed it with my undersigned attending witnesses, ut supra.

FRANCISCO VIGIL, [Rubric.]
Ex Officio Judge.

FRANCISCO BALDES. [Rubric.]
JOSEPH GOMES. [Rubric.]

In the place of Chama, on the 15th day of the month of January, 1726, before me, the chief alcalde and war captain of the new town and its jurisdiction, acting as ex officio judge, with my two attending witnesses, appeared before me (in default of a notary public) Ensign Cristobal Torres, together with his wife, Anxela de Leiva, and his son, Diego Torres (lieutenant of this jurisdiction), stating that they gave to Juan de la Serna for house and corrals, for garden, which partially adjoins that of Joseph Madrid, and a piece of land sufficient to plant about one cuartilla of corn, and its boundaries are: On the east a monument and lands of D. Torres; on the west a monument and lands of said Joseph Madrid; on the south a monument and lands of said Diego Torres; on the north a monument and a comb of said land; also in the untilled lands in equal parts. Only what he is cultivating may be adjudicated in this manner, and he should have an instrument from me, so that
109 there may be no confusion at any time, but that all the settlers may have equal benefit, and the said land which I adjudicate to him can not be sold to any of the settlers of said tract away from there. We make him a gift and donation of said lands, pure, simple,

perfect, and irrevocable, which the law calls *intervivos*, with respect to which we waive the laws of the royal *ordenamiento*, together with the aid of the wrongful and most wrongful injury, or deception or rescission, and we desist and withdraw from the rights and actions, real and personal, decrees and executions and others of possession and dominion which we have in said lands, which we cede and relinquish and transfer to said Juan de la Serna, his wife, children, and successors, whom we put in our own right and grade, that they may, as a result thereof, enjoy them as their own and enjoy them with a clear right and general administration, sell them or alienate them or exchange them. We give them free of lease, mortgage, tribute, or any burden. As real owners we bind ourselves to the warranty of this deed and donation made of our own will in due form; that we may be obligated to make it forever certain and effective, with regard to which we will offer no contradiction, now or at anytime, ourselves, our children, and successors, and if we should offer or stir up any, that we be not heard, in or out of court, to which end we waive all those laws that protect and favor us. We waive our own right, domicile, and residence, the law *sit cumvenerit de jurisdictione et omnium judicium*, together with the general law on rights, and we ask the royal assistance and that his royal justices compel and force us, with all the rigor of justice, to observe this deed, doing in our causes and in

110 this particular one as if it were by a definitive sentence of a competent judge that has become *res judicata*, given with the consent of the party without appeal, by which he should enjoy and enjoys the dominion, property, and seignior. Thus we executed it and they signed with me. I certify I know the parties, and that it passed before me with the witnesses to the instrument, who were Bartolome Olguin and Francisco Truxillo, on blank paper, because there is no stamped paper in these parts, *ut supra*.

DIEGO TORRES. [Rubric.]
MATEO TRUXILLO. [Rubric.]

CRISTOBAL TORRES. [Rubric.]
JOSEPH TRUXILLO. [Rubric.]
Before me:

FRANCISCO JOSEPH CASSADOS. [Rubric.]

(Indorsed on the foregoing conveyance:) I, Juan Serna, say that to-day, March 2 of this present year of 1732, I relinquish this donation of lands made to me by the deceased Cristobal Torres, waiving the rights I have in said tract, because I am without means to maintain myself on it and to aid the real owners who now hold it.

Done on said day, month, and year, and, as I do not know how to sign, I asked Juan de Dios Martin to sign it for me and he signed it at my request.

At the request of Juan de la Serna:

JUAN DE DIOS MARTIN. [Rubric.]

111 In the place of Chama, on the 15th day of the month of January, 1726, before me, the chief alcalde and war captain of the new town of Santa Cruz, acting as *ex officio* judge, with two attending witnesses, appeared before me Ensign Cristobal Torres, together with his wife, Anxela Leiva, and his son (the lieutenant of this jurisdiction), Diego

Torres. They gave a piece of land to Joseph Madrid (which they enjoy by virtue of a grant), sufficient to plant one cuartilla of corn, a little more or less, the boundaries of which are, on the east, lands of Juan de la Serna; on the west, Diego Torres; on the north, Joseph Truxillo; on the south, Diego Torres, with its monuments of which lands I make him gift and donation, pure, simple, and irrevocable, which the law calls *inter vivos*, with regard to which I waive the laws of the royal *ordenamiento*, together with the aid of the wrongful and very wrongful injury and deception or rescission, and we desist and withdraw from the rights and actions, real and personal, decrees and executions and others of possession and dominion which we have in said lands, which we cede and relinquish and transfer to said Joseph Madrid, his wife, children, and heirs, whom we put in our own right and grade that they may, as a result thereof, enjoy them as their own, and enjoy them with a clear right and general administration, sell them or alienate them (except to settlers on said tract) or exchange them. We give them free of lease, mortgage, or tribute or any other burden. As real owners we bind ourselves to the warranty of this deed and donation made of our will, in due form; that we can be obligated to make it forever certain and effective, with regard to which we will offer no contradiction, now, nor at any time, ourselves, our children, our heirs or successors, and if we should offer or stir up any, that

112 we be not heard, in or out of court, to which end we waive all those laws that favor us. We waive our own right, domicile, and residence, the law *sit cum venerit de jurisdictione et omnium iudicium*, together with the general law on rights, and we ask the royal assistance and that his royal justices compel and force us, with all the rigor of justice, to observe this deed, doing in our causes and in this particular one as if it were by a definitive sentence of a competent judge that has become *res judicata*, given with the consent of the party without appeal, by which he should enjoy and enjoys the dominion and property in said land, and it is so understood in regard to the rest of the tract, in equal parts, for in this way I give it to all of those who have my deed, because they are settlers. It is adjudicated in property only to those who, with their labor cultivate it and have a deed from me, so that at no time they may prejudice each other. A piece of land for garden is adjudicated to him, the boundaries of which are, one the east, the road; on the south, a monument; on the north, the road; on the west, another monument, with a house, lot, and corrals wherever he may make them. It is understood that half of the garden belongs to Juan de la Serna. In this manner they executed it, to which I certify. I know the parties thereto, and that it passed before me, together with the witnesses to the instrument, who were Francisco Truxillo and Cristobal Tafoya. It is on blank paper, because there is no stamped paper in these parts, *ut supra*.

CRISTOBAL TORRES. [Rubric.]

DIEGO TORRES. [Rubric.]

Attending witness:

JOSEPH TRUXILLO. [Rubric.]

Attending witness:

MATEO TRUXILLO. [Rubric.]

113 Before me,

FRANCISCO JOSEPH DE CASSADOS. [Rubric.]

(Endorsed on the foregoing conveyance:) I, Juana de la Serna, widow of Joseph Madrid, state that to-day, 2nd of March of this year of 1732, I relinquish this donation of lands, which the deceased Cristobal Torres made to my deceased husband, because I am alone and helpless and can not support myself on said tract, and I return this donation to the original owners of the lands that they may be prejudiced in nothing, and because this is the truth, and as I do not know how to sign, I asked Juan de Dios Martin to sign it for me.

At the request of Juana de la Serna.

JUAN DE DIOS MARTIN. [Rubric.]

The GOVERNOR AND CAPTAIN-GENERAL:

I, Mateo Truxillo, a resident of the Cañada, appear, with all humility, placed at the feet of your excellency, in due form of law and as my interests require, and say, that I am one of those who were settled at Chama, together with a son of mine, who is Francisco Truxillo, and who, because of an accident of a fall from a horse could not appear before your excellency, and we two say that it does not suit our convenience to again settle at said Chama on account of the great risk we might run of losing our lives because of the Indians and barbarous nations that live in the country around said Chama. It is true we abandoned said tract,

114 but it was because others abandoned it first. My said son was there afterwards with three women for fifteen days, when he was compelled to leave what Captain Cristobal Torres had allotted to us for us to plant, and now we are in a more suitable location. This is our resolution and no other. I and my said son relinquish said tract. Therefore, I ask and pray your excellency, with due veneration, to be pleased to order with justice what is most suitable for us, and I swear in due form that this, my communication, is not in bad faith, etc.

MATEO TRUGILLO. [Rubric.]

The GOVERNOR AND CAPTAIN-GENERAL:

I, Francisco Trujillo, a native of this Kingdom and a resident of the place of Embudo, appear before your excellency, in due form of law and as my interests require, and say, that, in obedience to the decree shown us by order of your excellency, I am so poor I have no means to enable me to settle the piece of land I had at Chama, because of the great danger there is at said Chama. I am burdened, sir, with many small children, whom the enemy might kill for me, on account of which danger I relinquish said lands and in order that, at no time, I or my children may claim them, let us not be heard in or out of court, for, as I am helpless and so worn out, I am going to prostrate myself at the feet of your excellency and request you to look upon me with charity, and I swear, before God and the sign of the holy cross, this my petition is not in bad faith and in what is necessary, etc.

FRANCISCO TRUXILLO. [Rubric.]

115 In the town of Santa Fe, on the fourth day of the month of November, in the year one thousand seven hundred and thirty-three, in the suit and cause that has been carried on upon the petition and complaint of Lieutenant Diego de Torres and Bartolo Trujillo, citizens of

Chama, against Juana Lujan, Captain Joseph Trujillo, Nicolas Jorge, Josepha de Madrid, a widow, Cristobal de Tafoya, the younger, Antonio de Sandoval, Juan de Serna, Mateo Trujillo, and Francisco Trujillo, citizens of the new town of Santa Cruz, in relation to the lands which Captain Cristobal Torres distributed among them at the place of Chama, (which he had by royal grant) under the condition that they were to settle and remain thereon; and said Captain Cristobal Torres having died before he could acquire dominion in those that he held, and his legal heirs and the other holders of interests also having abandoned them, leaving them depopulated without having held them or resided thereon for the period which His Majesty orders and commands;

Therefore, I should command, and I did command, that said lands be restored to the royal treasury and be proclaimed as royal domain to the end that grant may be made thereof, in the name of His Majesty, to those who may desire to settle upon them under the conditions and upon the terms fixed by his royal laws.

Thus I decreed, commanded, and signed it with the undersigned attending witnesses, for lack of a public or royal notary, of which there is none in this Kingdom.

DON GERVACIO CRUZAT Y GONGORA. [Rubric.]

GASPAR BITTON. [Rubric.]

116

JUAN ANTONIO DE UNANUE. [Rubric.]

At the town of Santa Fe, on the 24th day of the month of November of 1733 years, I, Colonel Don Gervacio Cruzat y Gongora, Governor and Captain General of this Kingdom of New Mexico and its provinces for His Majesty, in view of my declaration in my decision on the lands referred to in these proceedings, should order, and did order, that Captain Juan Estevan Garcia Noriega, chief alcalde of the new town of Santa Cruz, give notice of said decision and declaration to those mentioned therein. I so provided, ordered, and signed it with my attending witnesses in default of a public or royal notary, there being none in this Kingdom.

DON GERVACIO CRUZAT Y GONGORA. [Rubric.]

GASPAR BITTON. [Rubric.]

JUAN ANTONIO DE UNANUE. Rubric.]

In the new town of Santa Cruz, on the 6th day of the month of December, 1733, I, Captain Juan Estevan Garcia de Noriega, chief alcalde and war captain of this jurisdiction, made known the definitive decree resulting from the decision pronounced by Don Gervacio Cruzat y Gongora, governor and captain-general of this Kingdom, the parties in interest in the body of these proceedings being present, and in witness thereof I signed it with my two attending witnesses, on said day, month, and year.

JUAN ESTEVAN GARCIA DE NORIEGA. [Rubric.]

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Witness:

ALONSO RUEL DE AGUILAR. [Rubric.]

FRANCISCO GOMEZ DEL CASTILLO. [Rubric.]

PLAINTIFF'S EXHIBIT E.

This petition was presented to Captain Francisco Joseph de Casados, chief alcalde of this new town of Santa Cruz, on the 31st of October, 1725.

To the CHIEF ALCALDE AND WAR CAPTAIN:

I, Captain Cristobal de Torres, a soldier of the royal presidio of the town of Santa Fe, in due form of law, appear before you and state: That whereas you partitioned the tract (which Juan de Mestas, now deceased, held by virtue of a grant) among his children as his heirs, the boundaries of which, as set out in his said grant, are contradictory to mine, for I own another tract above, and at the time and when royal possession was given me said deceased was summoned and agreed and conformed to mine, and because said partition is in accordance with the opinion you formed of the grant of said deceased and is prejudicial to me in what I possess by law, I have thought proper to represent to you my rights that you may, if so pleased, order Ventura Mestas, son and executor of said Juan de Mestas, to appear before you, so that, after examination of both grants, you may have information of his boundaries and of mine, and that neither the one nor the other party of us be prejudiced, a matter of justice which I hope to see distributed from the great amount administered by you, and I swear before God and the sign of the cross that my petition is not in bad faith and what is necessary, etc.

CRISTOBAL DE TORRES.

119 And upon examination by me I accepted it as presented, in so far as permitted by law, and in view of the justice of his petition, I caused Bentura Mestas to appear before me and made known to him the above petition. When he had heard, seen, and given attention to it, he asked that it be given to him to enable him to plead in his defense, and I, said chief alcalde, having examined both grants, find in that owned by Captain Cristobal de Torres the consent which the deceased Juan de Mestas gave to the possession which General Juan Paez Hurtado gave to said Captain Cristobal de Torres, in the name of His Majesty, as an instrumental witness therein offering no obstacle thereto, from which I find that the request of Captain Cristobal de Torres is just, and referring to said possession and consent of the party and being justified by said General Juan Paez Hurtado, as lieutenant of the governor and captain-general of this kingdom, I give him this order to make the defense he might have within the term of three days and, when this order was made known to him, he replied that he would not make it till it suited his convenience, which statement he made in the presence of my attending witnesses, who were Juan Joseph de la Cerda and Miguel de Quintana, together with whom I signed it, acting ex officio, on said day, month, and year, ut supra. Further, when asked for a receipt for this document for the security of Captain Cristobal de Torres, to whom I, said chief alcalde, should deliver it, until such time as this party should make his reply, he said that he did not wish to give it, for which reason I considered it proper to bring this circumstance and order to the

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knowledge of the governor for his excellency to take such action as he should be pleased to take. Done ut supra.

FRANCISCO JOSEPH DE CASSADOS.
MIGUEL DE QUINTANA.

Attending witness:

JUAN JOSEPH DE LA CERDA.

In the town of Santa Fe, capital of this kingdom of New Mexico, to the general, Don Juan Domingo de Bustamante, governor and captain-general of said kingdom, Cristobal Torres, retired ensign, presented these proceedings and asked him to be pleased, for his greater security to explain . . . (torn) . . . of the lands granted him by General Don Juan Paez Hurtado, lieutenant of the governor and captain-general of this kingdom, and when his excellency had examined the said grant and possession which he had taken without any contradiction, said that he would order that no person interfere with them in any manner, both because they are proven and because Bentura de Mestas has no right whatever to them, for the right he might have would be when there was no citation in the grant for him, who, when cited, did not oppose and consented to the possession. Therefore, I said I ought to order that said Cristobal Torres be maintained therein and that no person interfere with him, but that he hold it quietly and peaceably as set out therein and, that nothing may be wanting, I should confirm and did confirm it.

This his excellency decreed, ordered, and signed before me, the
121 present civil and military secretary.

JUAN DOMINGO DE BUSTAMANTE.

By order of the governor:

ANTONIO DE GRUCLAGA,
Civil and Military Secretary.

122 DEFENDANT'S EXHIBIT.—*Translation of title papers in the Plaza Colorado grant.*

Archive No. 1100.

Don Tomas Valez Cachupin, governor and captain-general of this kingdom:

Whereas, upon my entrance into this government I found several places deserted and abandoned which had been occupied by different families to whom lands had been given in the name of His Majesty (whom may God preserve) by the governors my predecessors, in the jurisdiction of the Villa de la Cañada, called Abiquiu, Ojo Caliente, and Embudo, lands rich and valuable for agriculture, on which the dwelling houses which belong to them still exist; and also being informed that these families are dispersed and are without lands to cultivate and that they are living at the expense of others who are supporting them, and it being necessary for the service of the King and for the benefit of this province that the place called Abiquiu should be resettled in this year by the same families to whom it belongs, each family occupying the town lot and agricultural lands in order to plant them in the coming season, and in order that the enemy who caused the abandonment may know and see

the little fear had of them, but, on the contrary, the greater strength and valor of the Spanish residents of this kingdom who with such great glory sacrifice their lives in defense of the King's dominion: Now, therefore, I direct that the alcalde mayor of the Villa de Santa Cruz de la Cañada, Don Juan Joseph Lovato, shall summon the residents and families who belong there and who are the owners of the ranchos at Abiquiu and shall notify them that they shall with all their property go and occupy their houses and lands in order to plant the same in the next coming spring, and they shall be escorted and protected by the arms of this royal garrison so far as may be possible without neglecting other obligations of equal importance caused by the many enemies who invade and infest this province. And in case that these families should refuse to resettle the said place of Abiquiu in the coming spring, their lands shall be declared to be Crown lands and their grants void, and they shall be given to such families as may desire to resettle them in the name of the King, with the benefits of the town lots and the buildings; and these being scattered and far apart, and the residents being unable to help one another in the attacks of the enemy, it will be advisable, for the security of their lives and those of their children and wives, that they should build their houses contiguously and the streets laid off by measure, a good site selected, and the town to be in the form of a square, the buildings forming a plaza in such manner that it may be closed, and with doors, so that they may be shut at night and be safe from the attacks of the enemy and more capable of defense by the troops of the garrison which defend it. Also warning all these residents to procure arms and not to go out of their houses to their labors in the field without them, because the confidence in which these people live and their lack of precaution afford opportunities for the barbarous enemy to triumph by killing some of the less cautious. They should go to the fields in a body, and all together cultivate the land of one person at a time until all are cultivated, and in this way they will be respected by the enemy.

Given and done in the city of Santa Fe on the twenty-first day of February, in the year one thousand seven hundred and fifty.

THOMAS VELEZ CACHUPIN.

By order of the governor,

THOMAS DE ALVEAR.

In this town of San Juan de los Caballeros on the sixth day of the month of March, one thousand seven hundred and fifty, by virtue of the decree above issued by Don Thomas Velez Cachupin, governor and captain general of this jurisdiction, I, Juan Joseph Lovato, alcalde mayor and war captain of this jurisdiction, cause to be assembled the settlers of Abiquiu and informed them of the order of his excellency to those who were in the jurisdiction, and they said that under the foregoing conditions they would go to settle their lands in the manner and with all the requisites imposed, and in order that it might so appear those who consented signed this act with me, and those who did not, their answers will be given at the foot of this document, which is extended

in the manner usual in this kingdom with assisting witnesses dated as above.

JUN. JPH. LOVATO,
Juez Receptor.

JUN. JOSEPH DE LA SERDA,
A ruego de Manuel de la Rosa.

JUAN JOSEPH DE LA SERDA.
MIGUEL MARTIN SERRANO.
JUAN BAKES.
PR. YGNACIO BALDES.
JUAN BALDES.
GERONIMO MARTIN.

Assisting witness:
MANUEL DEL CASTILLO.

Assisting witness:
JUN. DOMINGO LOVATO.

Immediately thereafter the retired sergeant, Juan Trujillo, appeared before me, the said alcalde mayor, and he said that until the land was in peace he could not go to settle his lands, and that it being necessary to settle them now that he relinquished his right in due form, and that in order that it might so appear he signed with me and the undersigned, my assisting witnesses, with whom I act by delegated authority in the said town on the said day, month, and year as above, to all of which I certify.

JUAN TRUJILLO.

125 JUN. JPH. LOVATE,
Juez Receptor.

Assisting witness:
JUN. DOMINGO LOVATO.

Assisting witness:
MANUEL DEL CASTILLO.

In the city of Santa Fe, capital of this kingdom, on the seventh day of the month of March, of the year one thousand seven hundred and fifty, I, Don Thomas Velez Cachupin, governor and captain general of the same, in view of the proceedings had by the alcalde mayor, Don Joseph Lovato, which he is, of the jurisdiction of the Villa Nueva de Santa Cruz, I ought to thank, and I do thank, all those who, in the foregoing answer, have said that they are ready to go to settle in their homes and to cultivate their lands at Abiquiu, and they shall be given a guard from this garrison; and with regard to the relinquishment voluntarily made by one of the settlers, who was of the said place, in view of the notification, it is accepted, and the said alcalde mayor is directed to place in possession of the same a reliable person who will cultivate and improve all the lands, and that he shall be a person who can, with the others, defend this frontier and domain of the King, the said alcalde sending to me the extent of the possession which he may give in order that I may confirm it, and he will take up the one held by the person who makes the relinquishment in order to forward it (to me), and to all the other settlers of said settlement who may go there he will make known that which I have ordered,

placing their answers in continuation of the present that they may be of record; and if it should appear from them (the answers) that the parties do not want to go, he will place in possession others of such as may be more fitted for such resettlement, doing what has been prescribed; thus I decreed, ordered, and signed, with my assistants, on the said day, month, and year, to which I certify.

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THOMAS VELEZ CACHUPIN.

THOMAS DE ALVEAR Y COLLADO,
JUAN ANTO. GONS. DE EL PERAL.

Reply of Bartolome Trujillo.

In this place of Nuestra Señora de la Soledad of Río Arriba on the eighteenth day of the month March, one thousand seven hundred and fifty, before me, the alcalde mayor, Juan Joseph Lovato, personally appeared Bartolome Trujillo, one of the settlers of Abiquin, and having heard the foregoing superior order he said that he can not go, and that if it be lawful to declare the land Crown land that it be done, but that he does not relinquish his right neither now nor at any time, and he signed it with me and my assisting witnesses in the absence of notaries within the distances prescribed by law. *Ut supra.* To which I certify.

BARTOLOME TRUJILLO.

JU. JPH. LOVATO,
Juez Receptor.
MIGUEL DE SALASAR.

Reply of Juan Domingo Lovato, Ygnacio Martin, and Pablo Trujillo.

On the said day, month, and year, I, the said alcalde mayor and war captain, there being present Ygnacio Martin and Pablo Trujillo, residents of the tract which formerly belonged to Salvador de Torres, situated in the said place of Abiquin, and the foregoing decree of the governor, Don Thomas Velez Cachupin, in regard to the resettlement of Abiquin having been read and explained to them, and they having heard, said, both together and each for himself, that from now and henceforth they relinquished the rights they had acquired rather than expose themselves to the dangers they had encountered, and upon their being asked whether they could write they said no, and I, the said alcalde mayor, signed, acting by delegated authority, with the undersigned, my assisting witnesses, *ut supra*, to which I certify.

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JUN. DOMO. LOVATO,
PEDRO ANTONIO MARTIN.

JUAN JOSEPH LOVATO,
Juez Receptor.

Decree.

Captain Juan Joseph Lovato, alcalde mayor and war captain of this jurisdiction of the villa Nueva de Santa Cruz and its dependencies, by Don Thomas Velez Cachupin, civil and military governor of this kingdom, by His Majesty, etc.

I make known to the residents permanent and inhabitants incomers and outgoers, that by order of the said governor the tracts, houses, and

town lots of Juan Trujillo, Bartolome Trujillo, Ygnacio Martin, and Pablo Martin, who were residents of Santa Rosa de Lima de Abiquiu, are declared to be Crown property, and being empowered, as I am empowered (as it more fully appears in the foregoing decrees), to make grant of the said tracts, and to place in possession of such persons as are willing to make use of the said tracts, I ordered that this decree be published in the largest settlements in this jurisdiction, and in order that it may appear I signed it in the manner usual in this kingdom, in this pueblo de San Juan de los Caballeros on the eighteenth day of the month of March of the year one thousand seven hundred and fifty, I certify.

JUAN JOSEPH LOVATO,
Juez Receptor.

ANTO. DE BEITTIA.
PEDRO ANTTO. MARTIN.

Publication.

On the nineteenth day of said month and year the foregoing decree was published by me, the said alcalde mayor, to the largest assemblage that could be procured in this pueblo of San Juan, and in order that it may so appear I signed it with the undersigned, my assisting witnesses, to which I certify.

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ANTTO. DE BEITTIA.
PEDRO ANTTO. MARTIN.

JUAN JPH. LOVATO,
Juez Receptor.

Act of settlement.

Being at this place of Santa Rosa de Lima de Abiquiu on the sixteenth day of the month of April, one thousand seven hundred and fifty, I, Juan Joseph Lovato, alcalde mayor of this jurisdiction, in obedience to that which was ordered by Don Thomas Velez Cachupin, governor and captain-general of this kingdom, Captain Miguel Martin, Juan Joseph de la Serda, Geronimo Martin, Ignacio Baldes, Juan Baldes por su madre Rosalia Baldes, and Manuel de la Rosa, and also thirteen half breeds being assembled, made the resettlement at the place where the chapel is situate, and this being the center, I had the quadrangular plaza laid off, and it contains one hundred and thirty-five varas on each side; and I laid off on the north and south sides sufficient space for four good streets, with entrances and exits free for those who might hereafter come to settle, leaving the half breeds temporarily in the house of Don Miguel Montoya until his excellency should decide in regard to them, and in order that it may so appear I made it a part of the proceedings, and I signed it with the undersigned, my assisting witnesses as above. I certify.

ANTTO. DE BEITTIA.
PEDRO ANTTO. MARTIN.

JUAN JPH. LOVATO,
Juez Receptor.

Year of 1750.

To the GOVERNOR AND CAPTAIN-GENERAL:

Ygnacio Baldes and Rosalia Baldes, named in the grant of lands at the place of Abiquiu, which the Governor-General Don Gaspar Domingo de Mendoza made to us, and placed us in possession of the same in
 129 the name of the King, our lord, whom may God preserve, appear before the greatness of your excellency, and asking that we be given all the privileges permitted by the law, we say:

That, whereas, we have suffered and are suffering the gravest extor-
 tions and vexations because of the great omission of General Don Joaquin Codallos y Rabal, who having been advised by the Comanche enemy of the invasion with which the said general was threatened, and which advice was sufficiently notorious and public, there following this reports of divers kinds to the effect that the Comanche enemy intended to advance upon the settlement of Ojo Caliente or upon that of Abiquiu, and after this the many trails that were seen and of which information was given to the said general many times and repeatedly, which on account of their being public, notorious, and well known, your excellency must have heard of them, and on one occasion the spies saw fifteen trails, and with all the information given to the said gentleman we were not given even one soldier as a guard; on the contrary, notifying his lieutenant, he detailed, at the utmost six or eight Indians and four or five residents and these so poor that to do their guard duty they had to use their little jack mules, and this was for a week only, our settlers being again left to themselves, and it was our misfortune that at this time the Comanches fell upon us, as your excellency knows, and this made so little impression that he returned with the same escort as before without having met the enemy, and notwithstanding this, sir, in order to hold our ranches and not to lose our little all, we held them until under penalty of five hundred dollars fine we were ordered to abandon our houses and ranches within the term of eight days, and we, seeing too much haste in an order so severe and
 130 oppressive, were compelled to ask for more time in order that we might collect a part, seeing that we could not save the whole, of our little property, leaving the rest abandoned in the fields, and being deprived of our small and large stock and horses, our own bodies being all that we have, and being without means to remove, and keeping only such animals as we can provide for and they so poor, lamenting the hunger and poverty caused by the tyranny of the cruel enemy whose daring has been greatly increased by this abandonment, since he has entered the thickest settlements, and is it an easy thing to defend ourselves against his barbarity and cruelty, for if they do this where is there any immediate remedy, they killing as they have killed so many, and your excellency knows and has seen with your own eyes that it was without remedy, for how could we lend any assistance at a distance of seven or eight leagues, and those who are ready to resettle being so few, some six at the utmost, and what are these in the case of an invasion of the enemy, and no matter how strong a garrison might be furnished by your excellency we would not be secure, because the farmers and the shepherds are compelled to go out in order to attend to their business; and finally, in order to avail ourselves, as good Christians, of spiritual consolation, and to take our father minister to hear a confession, an escort of ten or twelve men would be necessary for his safety, and in case of necessity as

it urgent, that horses be furnished for the said father minister, how are we to do it when we have none? And now we find that we are compelled under your excellency's order as loyal vassals of His Majesty the King, whom may God preserve to resettle our said tract, and if we do not, that we shall relinquish it and it to become Crown land; to which we say, sir, that for the period of ten years we have been settled upon and have held our ranches with the usufruct and rights prescribed by the laws, and if your excellency can find a law under which we may be deprived of the royal grants which the King our lord has granted to us
 131 by absolute decision of your excellency it will be a reason why, as he was the cause of our losses and removal, he should be responsible for having deprived us of what was our own when we never even dreamed of leaving that which had cost us so much, and so, in our own defense, we inform your excellency that we in no manner relinquish the right which we have to these ranches, because at all times we intend to use them as our own, provided that there is security and safety from the enemy, as there was at the time when we took possession; and besides, at the said place of Abiquiú, there is the disadvantage of the Chama River when it is high, the settlements of the said ranches being on both sides of the river, and the side upon which we are is better suited for the chapel and town lots, and the agricultural lands are excellent and well situated for our use and the temporary accommodations of any that might come, advantages not possessed by the other side where the chapel is, for it is close under a hill, with the ranches adjoining, but because of this being evident and well known we will not tire your excellency further on this point; and it seems impossible, that being on both sides, that those on the one and on the other sides could assist one another when the river was high, particularly against an attack by the enemy; and so, sir, although it seems to us that your excellency, through your zeal and good management and activity, has succeeded in bringing the wild beasts of the forest to the flock, as gentle as lambs, your methods being so Christian and catholic as to have reduced so cruel an enemy as the Ute, nevertheless, we distrust them because of their faithlessness.

Wherefore, to the grandeur of your excellency, we ask and pray with all humility that you will permit that we do not go to settle until we are entirely secure from the enemy, as also the planted wheat and the gardens, and we hope from the very catholic zeal of your excellency that
 132 this our petition will be granted, and we swear, in due form of law, that this our petition is not in bad faith and in that which is necessary, etc. Costs.

At the request of Ygnacio Baldes.

JUAN BALDES.

At the request of my mother, Rosalia Baldes.

JUAN BALDES.

SANTA FE, April 3, 1750.

The alcalde mayor of the villa of the Cañada will report to me in the matter of the petition of these parties his view and opinion, at the foot of this decree.

VELEZ.

To the governor and captain-general, DON THOMAS VELEZ CACHUPIN:

Obeying your decree and informed of the prayer of the petitioners, the alcalde mayor and war captain, Juan Joseph Lovato, says (without disregarding the justice of this petition), that these parties should not be indemnified because of that which was decreed and determined by your excellency in the matter of the resettlement of the town of Abiquiu for many congruent reasons: First, in community acts, according to the general rule the larger party controls the lesser, and the larger party being under like conditions and not having joined in the petition of the petitioners, it is clear that they are influenced by zeal for the royal service and their own interests than by the appearances of danger; second, because some persons, in view of the wise methods which your excellency has adopted in the provisions for the safety of that frontier, have determined to ask for grants of the lands which have been declared to belong to the Crown; third, because if Abiquiu is resettled the owners of the other abandoned places will be encouraged and will return to their
 1321 places, a thing so important for the royal service and the public good. I refrain from giving other reasons in order not to be prolix. Your excellency will decide upon that which is best.

San Juan, April 4, 1750.

JUAN JPH. LOVATO.

Decree.

In the city of Santa Fe, on the fifth day of the month of April, one thousand seven hundred and fifty: In view of the report and of what the alcalde mayor and war captain of the Villa de la Cañada says, and of the advantage to the service of the King, the common benefit of the settlements of the Cañada that will result from the resettlement of Abiquiu by the families to whom it belongs and others, and in order that the enemy may not succeed in getting possession of these old houses, and that they shall retire and not obtain by their continual invasions success in their hostilities; to this end, and to sustain the advanced post of Abiquiu, it shall be garrisoned by a squadron of soldiers of this royal garrison, in order that in company with the residents they may hold it and drive off the enemy. I, Don Thomas Velez Cachupin, governor and captain-general of this kingdom of New Mexico and castellan of its royal garrison, I ought to order, and I do order, that these parties, notwithstanding that which they have set forth, shall go with the other families to reoccupy their houses and lands in the manner and with the precautions prescribed; and since all the others who agreed to resettle are scrupulously obeying my orders, it is evident that these parties, through a propensity to disobey and a desire to make captious objections to all that works to the advantage of the service of His Majesty and the public welfare, seek to excuse themselves from doing that which is ordered,

for when the alcalde mayor published the order for all the families
 133 to resettle they willingly agreed to do so, even when there was not the firm belief that the hostile Utes would cease their attacks as they had promised to do, giving assurances of peace with demonstrations to confirm it, and it is considered that the representations made with a view to depreciate and discourage the resettlement is malicious, they thereby giving it to be understood that they only know and enjoy the royal grants made by His Majesty so long as it is to their interest, and showing their lack of courage in the defense of their estates and the

dominions of His Majesty, it being very significant that when the savage enemy was attacking the place of Abiquiu with the greatest vigor there was so much repugnance on the part of these parties to abandon it, notwithstanding the orders of my predecessor in the government, who finally compelled them to do so under penalty of five hundred dollars fine; and now that the resettlement is ordered by me with a view to their own benefit and that of the royal service of His Majesty, with the promise of aid and to guard them with the King's arms, and that there no longer any of those risks or dangers, they show the same or greater repugnance to obey. And in case these parties do not obey that which is ordered their lands shall be declared to be Crown lands and they shall be given to other persons who with more love and honor will serve His Majesty in the defense of his royal dominions; and there shall also be imposed upon them a fine of one hundred dollars, which shall be applied to the royal treasury, for although they have a legal title by reason of more than four years' possession of the lands granted under the law, they do not have it for abandonment and disobedience in cases of this nature; and if they desire to rent or sell the tract they can do so, but it must be while they are in actual possession and settlement, and not in that of the enemy; all of which shall be notified to them by the alcalde

134 mayor of the villa de Santa Cruz de la Cañada, Don Juan Joseph Lovato, who will see to its prompt fulfilment, and in case of refusal he will proceed to collect the fine out of the most available of their property and to declare the lands to be Crown lands; and he will report to me in order that I may make the proper provision. And by these presents thus I provided, ordered, and signed, acting with my assisting witnesses in the absence of notaries, of which there are none in this kingdom. I certify. I also direct that the alcalde mayor shall attach these instruments to the other proceedings in this matter, placing the notification at the foot of this decree. Date ut supra.

THOMAS VELEZ CACHUPIN.

Witness:

THOMAS DE ALVEAR Y COLLADO.
JUAN ANTO. GONZES. DE PERAL.

In this place of Nuestra Señora de la Soledad del Rio Arriba on the ninth day of the month of April, of the year one thousand seven hundred and fifty, I, Juan Joseph Lovato, alcalde mayor and war captain of this jurisdiction, Ygnacio Baldes being personally present, and Ignacio Baldes, jr., as attorney of his mother, Rosalia Baldes, I notified them de verbo ad verbum the decree of his excellency the governor, Don Thomas Velez Cachupin, which the said Baldeses heard, understood, and obeyed, and they protested that they would go to occupy their lands at Abiquiu, and because of their not knowing how to sign and in order that it might so appear, I, the said alcalde mayor, signed it with my undersigned assisting witnesses. I certify.

JUAN JOSEPH LOVATO,
Juez Receptor.

Witness:

ANTONIO MARTIN.

Witness:

JUN. DOMO. LOVATTO.

135 DEFENDANT'S EXHIBIT.—*Translation of title papers of the Plaza Blanca grant.*

His Excellency the GOVERNOR AND CAPTAIN GENERAL:

I, Manuel Bustos, resident of the town of Santa Cruz, present myself before your excellency through that channel and in that form permitted by law and most becoming in me, and state that I enter a piece of grain-growing land, it being unappropriated, vacant, and unsettled, and which lies on the north bank of the Chama River, and the said land begins from the limits of the land of Vicente Giron towards the west, praying your excellency to grant me sufficient for the planting of a fanega and a half of corn, for I find myself with a large family, consisting of a wife and children, and with some sheep and goats [ganado menor], making me the grant (which I hope for from the great goodness of your excellency) so as to have entrances and exits, pasturage, water, and watering places. In consideration of all which and of all I can set forth,

I ask and pray your excellency, in the utmost humiliation, that you be pleased to order that what I have asked be done, it being justice, which is what I implore from your excellency. I swear in form to this my petition without dissimulation. The costs and whatever is necessary, &c.

MANUEL BUSTOS.

At the town of Santa Fe, on the eighteenth day of the month of July, in the year one thousand seven hundred and thirty-nine, I, Gaspar Domingo de Mendoza, governor and captain general, having examined this petition, considered the same as before me; and in regard to what

the petitioner asks I should have commanded and I did command
136 that the possession of the land he asks for be granted to him, which order I make in the name of His Majesty (God preserve him), wherefore I direct the chief alcalde of the proper jurisdiction, and in his default then his assistant [theniente], to place him in possession, so that he may hold, cultivate, and improve said land for himself and his children, heirs, and successors, or whoever of them may have the best right thereto, noting in said possession all that may be prejudicial to any third party, and with all the conditions and circumstances required by the royal mandates, for otherwise it will not be valid.

Thus I provided, ordered, and signed with the witnesses in my attendance, acting by appointment, for want of a royal notary public, there being none in this royal province, &c.

GASPAR DOMINGO DE MENDOZA.

Witnesses:

DIEGO DE UGARTE,
JOSEPH DE TERRUS.

Possession.

At this place Abiquin, district of the jurisdiction of the new town of Santa Cruz, on the twenty-first day of the month of July, one thousand seven hundred and thirty-nine, I, Captain Diego de Torres, acting chief alcalde of said jurisdiction, by virtue of the above decree, proceeded to the said place, and arriving upon the piece of land which is granted to the petitioner Manuel Bustos, I, in the name of His Majesty (whom may

God preserve), took him by the hand and led him over said tract, and he cast stones and plucked up grass, shouting "Long live the King, our sovereign, and may God preserve him," in sign of his own proprietorship, with all the other ceremonies required by law, to all of which I certify, the said Bustos remaining in possession, Juan Trujillo and Juan Mansanares being instrumental witnesses; and the boundaries of the land are, on the east, lands of Vicente Jiron; on the north, the copper hills; on the west, lands of Rosalia Baldes, and on the south, the river of said place.

And that it may so appear I signed this document, acting by appointment with the undersigned attending witnesses, for want of a royal or public notary, and on this paper, there being no stamped paper in these parts.

Dated the day, month, and year as above.

DIEGO TORRES,
Acting Justice.

Witness:

JUAN JOSEPH LOVATTO.

Witness:

JUAN JOSEPH DE LA SERDA.

SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, New Mexico, November 28, 1863.

The foregoing three pages contain a correct translation from the original Spanish on file in this office.

(Signed)

DAV. J. MILLER,
Translator.

138 DEFENDANT'S EXHIBIT.—*Translation of the title papers of the Abiquiu grant.*

(No. 1.)

In the town of Santa Fe, on the tenth day of the month of May, of the year one thousand seven hundred and fifty-four, Don Thomas Vélez Cachupin, governor of this kingdom of New Mexico.

In virtue of that which was ordered by his excellency the viceroy captain-general of this New Spain, Count Revilla Gigedo, in the certified copy transmitted by his excellency with the opinions of His Majesty's attorney-general and the auditor-general of war in the matter of the inspection reports, and in approval of it, and in regard to the assembling of the half-breed Indians at the old town (town) Abiquiu, with the fact of there having been appointed by his excellency the viceroy a doctrinal preacher (town), its administration in its formal founding and establishment, and in relation to giving the said half-breed Indians sufficient cultivable land, as asked for by the attorney-general, in accordance with law eight, title three, book six, of the recopilacion of these kingdoms of the Indies, in which His Majesty directs that in the tracts (litios)

(NOTE.—Litios. I can not find this word in any dictionary to which I have access. In the paper following (Document No. 21) the word sitios (tracts) is used. I am inclined to think that litios is a clerical error, and that sitios was intended.—Translator.)

in which pueblos and settlements of converted Indians are to be established shall have a sufficiency of waters, lands, woods, entrances and exits, and cultivable lands, and one league in length of commons, in order that they may keep their herds without interfering with those of the Spaniards. In fulfillment of which I, the said governor, went to the said pueblo of A— (torn, about half a line) doctrinal teacher, who recently came from Mexico to take charge of the spiritual adminis— (torn) tion of the said pueblo, Fray Felix Joseph de Ordoñez y Machado, of the order of Our Father Saint Francis and other districts of
139 its jurisdiction, and placing him in possession of it (he), having taken it in conjunction with his prelate the vice-custodian of this holy tabernacle, Fray Thomas Murciano de la Cruz, I proceeded to the examination of all the lands, fields, woods, pastures, and waters with the object of marking off for the said pueblo of half-breed Indians recently assembled that which is ordered by the said law, and all advantages of rich lands of fine quality, abundance of waters, pastures, and (torn) being equal, there were measured for the said pueblo of Santo Thomas Apostol de Abiquiu on the south, from the center of the said pueblo, five thousand Castilian varas along the edge of a permanent creek (arroyo permanente) which descends in the said direction along the edge of the pueblo, with capacity to irrigate all the lands in said direction. On the north also, measuring from the center, there were marked off two thousand four hundred varas, because of having come to the deep river (rio caudaloso) called Chama, which runs from west to east, and without a ford at this point, which (river) serves as a boundary in the said direction. On the east, starting also from the center, there were measured two thousand five hundred and fifty said Castilian varas, having included within the said measurement the house and lands of a resident named Juan Trujillo and the heirs of Miguel Martin. On the west also, measured from the center of the said pueblo, there were measured another two thousand five hundred and fifty varas, including in said measurement part of the lands of the ranch of Geronimo Martin. And all the said lands so measured and marked off, with the assistance of Juan Jose Lovato, the chief magistrate of said jurisdiction and town of the Cañada, are cultivable, of good quality, and all under irrigation, with advantages of much water, forests, and woods. On the south there was marked off and measured for them the league of commons, its boundaries being, on the north the south
140 boundaries of the lands of the pueblo, on the south the high road which goes to Navajo, on the east the source of the creek (arroyo) which descends along the edge of said pueblo, and on the west the height (or hill) of the Rio de los Frijoles, with most abundant pastures of fine quality, because they are of grama grass, and others of the same with much water; and in testimony of all that has been set forth and done according to that which was ordered by his excellency the viceroy, and asked for by His Majesty's attorney-general in accordance with his royal laws and with consi— (torn and illegible, one line) (part of word, ladas) for the said pueblo (torn), Santo Thomas Apostol de Abiquiu, of the nation of the half-breeds recently assembled for their permanent establishment in it in the form of a republic. I made it a part of the proceedings which I signed with the said chief magistrate and my assisting

witnesses, with whom I act in the absence of notaries, of which there is none of any class in this kingdom." I certify.

THOMAS VELEZ CACHUPIN.

JUAN JOSE LOVATO.

MANL SAENZ DE GARVIZA.

It agrees with its original, which is in this archive of the government, where, at the petition of the head men of the pueblo of Santo Thomas de Abiquiu, I, Don Pedro Fermin de Mendinueta, knight of the order of Santiago, colonel of the infantry of the royal armies, governor and captain-general of this kingdom of New Mexico, had it made; it is faithfully copied, corrected, and compared, and my assisting witnesses, with whom I act in the absence of notaries, of which there is none in this kingdom, were those who saw it made, corrected, and compared. In testimony of the truth of which I sign my name.

PEDRO FERMIN DE MENDINUETA.

141

(No. 2.)

In compliance with your lordship's decree, dated April 25, I had its contents read to Don Pedro Ignacio Gallego and Don Santiago Salazar; and having assembled all the natives of this pueblo of Santo Tomas Apostol de Abiquiu, they were notified by the secretary of your lordship's decree, in which it is ordered that there shall at once be measured a cord (cordel) of fifty Castilian varas; and having examined the tract for the grant of this pueblo, I began to measure the land and to see what might be given to each individual; so doing, I ordered the cord to be drawn from east to west, and it appears that there are five thousand one hundred varas of land; and beginning to partition them (the lands), I found that a part of the said lands is useless and of no value; a part of it, on account of its ridges and ravines (arroyos), could not be measured; and the discontent caused by this to the greater portion of the interested parties being seen by me and the two gentlemen, one of the gentlemen asked them what arrangements would suit them, to which they replied unanimously that each person should keep the land which he had, and that (to) those who had no land and (to) others who had little there should be given a part of the lands of those who had; under these circumstances, not failing to comply with your lordship's order and to pacify the aggrieved parties, we agreed, I as well as the gentlemen and those of the pueblo, to cut down the lands of the persons who had, and to give part of them to the aggrieved parties, with which they were contented and satisfied, segregating two hundred and fifty varas of land that are in litigation by the velardes until its conclusion. Besides this, they were given to understand that each person was free of the use and

142 they were citizens and to enjoy the rights of citizenship, for which they beg that your lordship will be pleased to approve that the vacant lands shall be open to cultivation, in so far as each one can according to his ability. There were also left in favor of the mission cornfields and a garden, which appears in the inventory, by which it appears to me that the tract (sitio) is open to the citizens who (illegible)

in Tome, Valencia, and other places; and in testimony whereof I signed it on this day with the two gentlemen who accompanied me and the secretary, of which I certify.

God and liberty, 1825.

CRISTOV'L QUINTANA. [Rubric.]

PEDRO IGNO GALLEGOS, [Rubric.]

SANTIAGO SALASAR, [Rubric.]

JUAN JOSE DE ARZE, [Rubric.]

Secretary of the Council.

To the Political Chief of this Province.

(Endorsed.)

That which you say to me in your official letter without date is well, but it seems to me that they are still in the same condition of not being able to make use of their property and sell it or alienate it; but the difficulty of bad and good land which you mention is overcome by measuring the good separately, and the bad also, and partitioning the good among all, and the bad in the same way.

God, etc., May 2, 1825.

With regard to the mission lands of which you speak to me, it is very well, since these will serve for church expenses of that parish.

BME BACA. [Rubric.]

143

(No. 3.)

In compliance with your honor's last decree, dated May 2, in relation to the partition of lands of the old Pueblo, called Santo Thomas Apostol de Abiquiu, in company with Don Pedro Ignacio Gallegos and Don Santiago Salasar, I ordered that the tract held by this Pueblo under the grant be measured; it was thus: It was measured from north to south and from east to west, and from east to west it measures five thousand one hundred varas; and from south to north in the canyon, two thousand and twenty-two varas, and I directed the native residents and the legitimate heirs, which they were of said Pueblo, to proceed with a twenty-five vara cord (cordon) to segregate the good land from the bad in order that each one might enjoy for himself the lot which might fall to him, and having delivered the first measurement by lot which each one drew (each) receiving thirty-five varas of land in width, and in length, some more than others on account of the bends of the river. The second partition was not made by lot, but by me and the gentlemen, giving them a portion of thirty-five varas to designate them and place them on an equality with those who were known to have received advantages in the lands in the first partition; and on the part from north to south, there were measured to each one along the canyon forty varas of land in the same way as in the first (partitions); and in the fourth (partition) the partition of the gardens was continued in the same way, by lot, with fourteen varas to each one segregating; in one lot two hundred varas of land and the mission garden, and also two hundred and fifty varas of land were segregated at the desire of the heirs, who are in litigation with the Velardes, until its conclusion. Recognizing as its boundaries on the

144 south the road of the Teguas, which goes to Navajo; on the north the river; on the east, lands of the plaza de la Capilla, and on the west lands of Geronimo Martin, and acknowledging receipt of them contented and satisfied, they shouted with content, pulling up plants, throwing up stones, and crying, "Long live the sovereign Congress, and long lived its President," who influenced the sovereignty to give them the land free for them to make such use of it as they pleased; and they also say that they thank Don Bartolome Baca, the governor and political judge, for his kind consideration of those who were well provided, as well as of those who had only a little, and that they are all equal without appeal from their alcalde and the two gentlemen who accompanied him, repeating the same expressions of thanks and contentment, and asking that they may not be deprived of the use of the uncultivated lands, which, for themselves and their children, they may clear of stones and cultivate by the sweat of their brows; and in testimony of what has been done, I signed it with the gentlemen who accompanied me in the said partition, a copy of the original remaining in this archive, on the fourth day of May, one thousand eight hundred and twenty-five.

JUAN CRISTOV'L QUINTANA. [Rubric.]
Constitutional Alcalde.

PEDRO IGO GALLEG0. [Rubric.]
SANTIAGO SALASAR. [Rubric.]

(No. 4.)

In compliance with your honor's last decree dated May 2, in relation to the partition of lands of the old pueblo called Santo Tomas Apostol de Abiquiu, in company with Don Pedro Ignacio Gallego and Don Santiago Salasar, I ordered that the tract held by this pueblo under (illegible and torn) it was measured from north to south and from east to west; it measures five thousand one hundred varas, and from south to north in the canyon two thousand and twenty-two varas, and I directed the native residents and legitimate heirs, which they were of said pueblo, to proceed with a twenty-five vara cord (cordel) to segregate the good land from the bad in order that each one might enjoy for himself the lot which might fall to him; and having delivered the first measurement by lot, which each one drew, (each) received thirty-five varas of land in width and in length some more than others on account of the bends of the river; and the second partition was not made by lot, but by me and the gentlemen, giving them thirty-five varas to designate them and to place them on an equality with those who were known to have received advantages in the lands in the first partition; and on the part from north to south they were measured to each one along the canyon forty varas of land in the same way as in the first (partitions), and in the fourth (partition) the partition of the gardens was continued in the same way by lot with fourteen varas to each one, segregating in one lot two hundred varas of land and the mission gardens and also two hundred and fifty varas of land which were segregated at the desire of the heirs, who are in litigation with the Belardes, until its conclusion. Recognizing as its boundaries on the south the road of the Teguas, which goes to Navajo; on the north the river, and on the east lands of the Plaza

de la Capilla, and on the west lands of Geronimo Martin; and acknowledging receipt of them, contented and satisfied, they shouted with content, pulling up plants, throwing stones, and crying, "Long live the sovereign Congress and long live its President," who influenced the sovereignty to give them the lands free, for them to make such use of it as they pleased. And they also say that they thank Don Bartolome Baca, the governor and political judge, for his kind consideration of those who were well provided as well as of those who had only a little, and that they are all equal without appeal from their alcalde; and the two gentlemen who accompanied him repeating the same expressions of thanks and contentment and asking that they may not be deprived of the use
 146 of the uncultivated land which for themselves and their children they may clear of stones and cultivate by the sweat of their brows. And in testimony of what has been done I signed it with the gentlemen who accompanied me in the said partition on the fourth day of May.

(torn) (part of word) Cristobal.

(torn) (part of word) Pedro.

(torn) (part of word) Salasar-Juan.

(torn) a copy on file in this.

(torn) (part of word) V.

It is a copy made (torn) original, true, and legal and compared in testimony, whereof I authenticated it as competent constitutional and conciliatory justice of the peace of this pueblo of Santo Tomas Apostol de Abiquiu, signing it with one witness on the sixth day of the month of May, 1841.

(torn)

MARIA CHAVES. [Rubric.]

(torn)

TO SERRANO. [Rubric.]

(No. 5.)

ABIQUIU, 16, 1829.

In compliance with the decree of Don Manuel Armijo, political chief and governor of this province, dated February 27, I have examined the documents which treat of royal possessions, as is that of the Polvadera (and) that of Vallecito, which adjoin that of the old pueblo, that they say thus that without prejudice to the five thousand varas of said pueblo in order that it may not be prejudiced they may fix permanent boundaries and examining the grant or concession of the pueblo which speaks of the center of the pueblo, there shall be measured south five thousand varas of land bounded on the front of the said pueblo by the high road of the Teguas, which goes to Navajo, for which I order and direct that in
 147 pursuance of the administration of justice the natives of this pueblo are free to enjoy and to fix their boundaries on a straight line from east to west, taking the front of the pueblo to the road of the Teguas, which is commonly known by impartial men who say that it is on this side of the foot of the bald hill of the Polvadera, which is where the road runs thus, I ordered, decreed, and signed. I refer to your honor as to how I shall manage with the town council of this jurisdiction of Abiquiu, since it is opposed to not to want to pay the dues of the secretary, for which cause this appointee refuses to write and publish the

decrees sent to this corporation and in order not to commit an error give us to understand what action shall be taken to remedy a thing so just and contrary which scandalizes the public.

God and liberty. Abiquiu, March, 1829.

To Don Manuel Armijo, political chief and governor of this province.

(Endorsed.)

ABIQUIU, *March 19, 1829.*

I have said in official letter of February 16 that they shall enjoy the right to the lands in accordance with the grant, placing their boundaries, which I have decreed.

MIGUEL QUINTANA. [Rubric.]

(No. 6.)

MEXICO, *August 11, 1829.*

Messrs. President SALGADO (and) Ministers NAVARRETE (and) GUZMAN:

Let this petition and accompanying documents be transmitted through Don Jose Maria Alarid, attorney of the petitioners, to the alcalde of

148 Santo Tomas de Abiquiu, in order that, in accordance with the grant of lands which they enjoy, he may keep them in possession of them, fixing the new boundaries for which they ask in conformity with those mentioned in the said grant, calling on the adjoining land holders to be present, and in case this one (the alcalde) or any one of them should object suspending proceedings in this part only, he shall hear the parties in interest, and after consultation with the assessor (asesor, official legal adviser) shall decide upon what is proper in equity, granting the parties the legal appeals they may make.

They made their rubrics. Three rubrics. Aguilar and Lopes, secretary.

It is a copy of its original which is on file in this secretary's office under my charge.

Mexico, August 14, 1829.

MARIANO AGUILAR Y LOPES, *Secretary.*

It is a copy of its original.

Abiquiu, October 25, 1829.

MIGUEL QUINTANA. [Rubric.]

(No. 7.)

This expediente in the case of the citizens of this town who are in suit against the citizens of Vallecito having been presented to me, after consultation with the assessor (asesor, official legal adviser), who directs in his decree of the second instant that I shall proceed to the partition of the lands in accordance with the grants of the first and old holders, I asked those of this pueblo for the original (grant) for the due fulfillment of the said decree, and they tell me that it is in the archive under your

149 charge; wherefore I apply to you, begging that you will be pleased to transmit it to me, the losing party paying the proper costs.

God and liberty. Abiquiu, August 13, 1831.

JUAN JOSE OLGIN. [Rubric.]

To the political chief of this Territory, Don Jose Antonio Chavez.

(Endorsement.)

Office, &c.

In reply to your official letter of the 13th of the present month, in which you ask for the documents of the first holders of Vallecito, I say that although they have been looked for they have not been found, as it is not easy to find old documents in an archive so old as this, particularly when their date is not given and there is not the slightest antecedent to enable a search to be made with any certainty.

God, &c. Santa Fe, August 17, 1831.

To the magistrate charged with the administration of justice in Abiquiu.

(No. 8.)

To the political chief of this Territory of New Mexico, Don Jose Antonio Chaves:

In obedience to the order which your honor gave me orally that I should proceed to carry out the decree of the attorney-general (asesor-general) of this Territory and that I should close the case in the matter of the lands which the half-breeds are rashly litigating on the 29th of last month, I notified them in the pueblo of Abiquiu to appear on the 5th instant, and also the holders of Vallecito, and I directed them to place at my orders on the day named an educated (hedicto) and intelligent man, one from each side, and I to name a third in discord and
 150 in addition to these to name two of the oldest men of the jurisdiction, who have been raised from childhood as shepherds in Vallecito, in order that they might point out to me the road of the Teguas, which goes to Navajo, and having arrived at the said pueblo on the said day, the said half-breeds failed to appear, and I ordered that they should be ready on the tenth, and on the tenth I went with the men named, and being in the said pueblo, I caused Francisco Marquez, the attorney of the pueblo, to appear before me in order to deliver to him the lands in accordance with the grant, and to execute the decree of the attorney-general (asesor-general), and the said Marquez refused to present the educated (edicto) man, and the grant as desired for the better fulfillment of my duties. I proceeded with the others mentioned to walk over the land measured in accordance with the grant, and having arrived at the landmark where the league of the commons mentioned in the said grant reaches, and seven hundred and four varas more where the said old men say that it is the road to Navajo, of which I informed your honor of what has been done, indeed these half-breeds only try to disturb the order of the proceedings.

Abiquiu, October 10, 1831.

JOSE FRANCISCO VIGIL. [Rubric.]

Office of the political chief, &c.

I have read your official letter dated the 10th of the present month, and not having any other reply to make except to acknowledge receipt, I hereby do so.

God, &c. October 15, 1831.

(No signature.)

To the alcalde of Abiquiu.

(No. 9.)

Considering the bad conduct of the natives of this Pueblo of Abiquiu on the day which I designated for the delivery to them of the lands in litigation with the holders of Vallecito it became necessary for me to secure my person with the provision of naming fifteen of the principal citizens of the jurisdiction to assist me in the delivery of the said lands in accordance with the copy which the parties in interest have laid before the superior tribunals and the supreme court of justice, and having in my own hands the concession (concepcion), I directed Don Jose Maria Ortiz and Don Ignacio Martin to measure a cord (cordel) of fifty varas in order to deliver to them the five thousand varas, and in continuation I measured the surplusage (sobrante) until I reached the road of the Teguas, which goes to Navajo, and having directed that the cord be wound up Francisco Marquez and Francisco Trujillo, who has come in to seduce this pueblo fell upon me treacherously and insolently with a tumult of the whole pueblo of old men, young men, and women trying to take the documents from my hands, Francisco Marquez saying it was the same to die at the hands of an alcalde as at the hands of the enemies. The men who were with me not being able to restrain him, he shaking the bridle reins of my horse with his hand after several ignominious and insolent reasons with which they insulted me, I directed that the lands should be measured from the center of the said town five thousand castilian varas, and immediately thereafter there were measured for commons another five thousand seven hundred varas, and I found the road of the Teguas which goes to Navajo and an old landmark. All the foregoing I did with the fifteen men who witnessed it, and the residents holders of Vallecito rejecting the assistance of the natives of this pueblo at the delivery of the lands where

152 I caused a landmark to be placed, and I executed the superior orders and not to make me responsible at any time.

Tell me señor governor what remedy can I apply to keep them from being so vicious that a constitutional alcalde can be maltreated in public and my person and the men who accompanied me attacked.

May God preserve your honor many years.

Road to Navajo, September 21, 1831.

To the governor and political chief of New Mexico, Don Jose Antonio Chavez.

JOSE FRANCO VIGIL. [Rubric.]

(No. 10.)

In this pueblo de Santo Tomas Apostol de Abiquiu on the thirteenth day of the month of May, one thousand eight hundred and forty-one, I proceeded I, the citizen Jose Maria Chavez, justice of the peace of the said pueblo, to the town of Santo Tomas accompanied by two men, citizens of this place, the citizens Pedro Trujillo and Domingo Lopez, and the object with which I went to the said town with said assistants (acompañados) was in compliance with superior orders which are now before me to partition and deliver to the heirs who formerly were of the pueblo some pieces of land which were not partitioned in the year twenty-five as appears by the original of that date made by the Alcalde Don Cristoval Quintana and his assistants and by sundry claims which before the courts

and even the Señor Prefect as appears by his decree, in which he orders that it (his decree) shall be carried out to the letter with reference to the said documents and in effect being in the said town I and the said assistants, in the house of the justice of the district the citizen, Gerónimo Gavego and the citizens of the said town, who are entitled to have delivered to them that which belongs to each one by law advising them that he can not be present on account of sick-

153 ness or on account of being away from home, may be represented by his wife or children or other person representing him, and all having been informed of the order I directed the said justice of the district to produce a cord and a legal vara, which he did, Manuel Lorenzo Trujillo bringing a hempen cord and the said judge a vara for measuring, marked with a number five, upon which I directed the two assistants to measure the cord (cordel) of twenty-five varas, and it having been done the measurement of the chorreras of the town was proceeded with in the rear and around marking off for that object fourteen varas and this I did with my assistants and all the citizens who (were entitled to the same) by law as aforesaid; and having divided this line of chorreras there were measured in width from south to north on the east side of the town site two hundred and seventy-five varas and in length fifty varas from east to west; and (that which lies) in front of the priest's house and parochial church, which front north, as far as the line of the lands of this front, is left for their income for the benefit of the heirs of this pueblo at the desire of all the heirs who unanimously declared it to be so: returning in the

(Chorrera, pl. chorreras. This word is used in New Mexico as an equivalent for the English words "house lot" or "back yard." The justice who wrote this paper was evidently a very illiterate man, and his use of the word is so vague that I have thought it best to use it in the translation with the remark that by it he clearly intended to designate all the land within the town site not occupied by the public square, the houses, and the entrances and exits.)

rear of the public square of the said (town) to the west side chorreras as far as the line which is at the foot of the hill, the irrigating ditch of the little river, returning on the south side. There were measured the aforesaid chorreras, and there remained a small piece, which can be cultivated, and the rest a steep bank until it reaches the chorreras of the plaza of

Moque, the line through the point which runs to the east of the
154 line of the chorreras to that of the citizen Jesus Barrauca forty-six varas less a quarter; and there were measured in the gardens that which had not been partitioned which gave in width five hundred and forty-eight and one-half varas. The partition was proceeded with in the first measurement (en prir media) by lot, which (lots) were marked, beginning with number one to the last, according to their census rolls, and according to what each took out of a hat, which was entrusted to Don Pedro Trujillo, that he should so do it, and measurement was made from the corner of the plaza, which is south and east, without prejudice to the chorreras, and the measurement being from south to north in which piece there fell to each four varas and only Consaucion Trujillo and Isabel Martines were left out, on account of which the measurement and partition of the line of the chorreras of the said town to the line of the chorreras of the town of Moque were proceeded with by the said lot,

which gave to each one vara and three-quarters, in which there was made up to the two aforesaid that which they did not get in the other place; and being in the gardens and being informed of the piece of land, which was there and which had not been partitioned, it was measured in two lines, because it was convenient so to do, and it gave five hundred and forty-eight and one-half varas; and the partition was proceeded with from north to south on the first line which faces the table land (mesa), also according to the number of lots, each receiving eight varas, which were given to them there on that line to those who were reached and the measurement of the other line was immediately made measuring from east to west, with the said number of eight varas continuing with those who on the first line were not reached, the two women who did not get anything on the first measurement being left out, for which of that which remains to be measured it shall be made up to them. In continuing in this town of Santo Tomas Apostol de Abiquiu on the fourteenth day of the month of May, one thousand eight hundred and forty-one, I, the present judge, and the assistants being
155 in the house of the lieutenant of police, Citizen Geronimo Gayegos,

I directed said judge to take the said cordel and to proceed to measure the other lands which had not been measured. All the parties in interest being present, the lands which are on the line of the garden of the priest's house to the line of the old river were measured, stretching the cordel from the said garden, which gave four hundred and seventy-five varas, and returning to the line of the said garden, which is from south to north, there were delivered to Consaucion Trujillo (and) Isabel Martines each eight varas, which they did not get in the gardens, (and) they exacted in the same place six and one-quarter varas, as I gave to all the same number of six and one-quarter varas to all of the heirs. The measurement was continued in the long marsh from east to west and from north to south. The measurement was not made to the south of the high hill to the north

the river, and in this (measurement) there were one vara and one-quarter and four fingers for each, and the last at the rate of three (fingers) from a creek (arroyo) to the hill on the east side, and immediately thereafter there were measured along the little river (rito) of the boggy marsh from below upwards nine hundred varas from north to south and from east to west, the high hills from one side to the other, and this (measurement) gave to each thirteen varas from below, where it was considered cultivable, until the marsh was reached, and immediately thereafter measurement was made at what is commonly called the alamo from north to south, giving to each three varas and three-quarters. In the said town I, the said justice, and the said assistants, being on the piece of land on the line of the garden of the priest's house on the west, and all the parties in interest (being present), on the eighteenth day of

the month of May, one thousand eight hundred and forty-one, the
156 measurement of the said piece (of land) from east to west was proceeded with, and it gave two hundred and fifty varas, and it was partitioned from west to east, each receiving three varas and one-half and two fingers, and in the south they are bounded by the line of the canyon and on the north by the line which was partitioned from south to north, which should line with the little river (rito), as it has ever been, and thirty-five varas which were measured of the boundary of the garden of the priest's house to the west to Juan Agustin Chaves, who

was in possession of them because he said that they were given to him to replace what had not been given to him in the year twenty-five on the other side on the plain on the west, and the thirty-five said varas were given to him with the condition that if at any time it should be ascertained that it had not been given to him at that time he shall return to the owners the said thirty-five varas of land which were not given to the said Chaves, and asking all the parties in interest whether there were any more cultivable lands which had not been partitioned in order that they might be partitioned all said unanimously that they did not know that there was any piece of cultivable land which had not been partitioned, and that they were contented and satisfied with having received the whole of the lands which belonged to them individually by law, of which they had held possession in common, not knowing their own individually, and having been asked by me whether they were contented and satisfied with the lands which had been delivered to them they all said unanimously that they are contented and satisfied and that they are pleased with the delivery which their alcade and his assistants has made and done with the greatest equity possible, and therefore, as it has been explained, they have no reclamation to make either now or ever, and they also announce all laws which may be in their favor and with regard to some

houses which were built since the time when that part outside of
157 the line of the fence of the public square (plaza) was common they shall have seven varas of chorreras, and having read to them all the proceedings they said unanimously that that which had been read to them is the same which they have received, and that it agrees with what has been done and which they admit has been done, and they say it in the presence of the señor justice and his assistants and two assisting witnesses, and that they do not know that anything remains to be partitioned except that which is known to be pasture land, entrances, exits, woodland, and other things of that class. And in testimony of all that has been done I signed it, with the parties in interest who know how to sign and the two assistants and two assisting witnesses, in the absence of a national notary, of which there is none of any class in this department, and it is written on ordinary paper because there is none of the proper stamp in this court on said day, month, and year. I certify.

JOSE MARIA CHAVES. [Rubric.]

GERONIMO GALLEGO, *Assistant*. [Rubric.]

PEDRO TRUJILLO, *Assistant*. [A cross.]

DOMINGO LOPEZ. [A cross.]

Witness:

ANTONIO PRIETO. [Rubric.]

Witness:

MARCOS CHAVES. [A cross.]

U. S. SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,

Santa Fe, New Mexico, May 23, 1885.

I hereby certify that the foregoing is a true and correct copy, to the best of my knowledge, of ten documents in the Spanish language now on file in the archives of this office in the matter of the private land claim of the town of Abiquiu.

CLARENCE KEY.

158 And be it further remembered that thereafter, to wit, on the 4th day of December, A. D. 1893, being the seventeenth day of the November term, 1893, of this court, held at Santa Fe, Territory of New Mexico, the court gave judgment as follows, to wit:

In the United States Court of Private Land Claims, sitting at Santa Fe, New Mexico, November term, 1893.

JOSÉ ISABEL MARTINEZ ET AL.,	} No. 140. Juan Jose Lobato grant.
<i>vs.</i>	
THE UNITED STATES.	

This cause having come on to be heard upon the petition of plaintiffs and those for whom they sue and upon the answer herein filed in behalf of the defendant, the United States of America, and the court having heard the evidence, both oral and documentary, and the arguments of Messrs. Geo. Hill Howard, Jeffries & Earle for plaintiffs and Hon. Matt G. Reynolds for the defendant, and being fully advised in the premises, doth find:

That the material allegations in plaintiff's petition are true and sustained by the proofs.

That the said Juan Jose Lobato grant was, on the 24th day of August, A. D. 1740, under and by virtue of the royal ordinances, edicts, laws, uses, and customs then in force and effect in the then province of New Mexico, granted unto Juan Jose Lobato under the following boundaries, to wit: On the east the old pueblo of Chama; on the north the Sierra (mountain) de las Grullas; on the south the Sierra (mountain) de Santa Clara; on the west the ascent to the Piedra Lumbre Hill, situated in Rio Arriba County, Territory of New Mexico.

The said boundaries being the same made to Cristoval Torres on the 6th day of June, A. D. 1724, which last said grant was, on the 24th day of October, A. D. 1733, upon due proceedings first had, revoked and the tract declared to be Crown lands, subject to regrant by Gervacio Cruzat y Gongora, then governor and captain-general of this said province.

159 That juridical possession of the said Juan Jose Lobato tract of land was by virtue of the said grant thereof duly delivered unto the said Juan Jose Lobato on the 11th day of September, A. D. 1740.

That the said grant was afterwards confirmed and ratified unto the said Juan Jose Lobato by the duly executed official decree of Joachin Codallos y Rabal, then governor and captain-general of the said province, dated the 15th day of June, A. D. 1744; that thereafter, to wit, on the 3d day of November, 1747, the said Juan Jose Lobato conveyed unto one Ventura Mestas, by an instrument in writing duly authenticated, which said conveyance was approved and the title to the said tract so conveyed was confirmed and ratified unto the said Mestas by Velez Cachupin, the then governor and captain-general of the said province, July 28th, 1751.

That from the date of the said grant unto Juan Jose Lobato up to the present time, he and his said vendee, Ventura Mestas, and their legal representatives, have been in the continuous actual use and occupation of the said tract, under and by virtue of the said grant therefor and the said confirmation and ratification thereof, with exception of that portion of the

same which may be included in the exterior limits of the Plaza Colorado, Plaza Blanca, and town of Abiquiu grants.

That by virtue of the said grant of the said tract unto the said Lobato and the said continuous possession of the same, the title thereto was complete and perfect at and before the treaty entered into between the King of Spain and the Mexican nation, A. D. 1821, and that the same was a complete, perfect, and subsistent valid title at and before the treaty of Guadalupe Hidalgo, between the United States and the Republic of Mexico, A. D. 1848, and is now so complete, perfect, subsistent, and valid, and vested in the heirs, assigns, legal representatives of the said Juan Jose Lobato, and that the petitioners as such are entitled to the confirmation of said grant to them.

It is therefore ordered, adjudged, and decreed that the said tract of Juan Jose Lobato, being claim No. 140 upon the docket of this court, be, and the same and the whole thereof, with the exceptions hereinbefore specified, is hereby established and confirmed to the heirs, assigns, and legal representatives of the said Juan Jose Lobato as against the United States of America, and this decree shall not affect any conflicting private interests under the said grant.

160 And it is further ordered, adjudged, and decreed that the boundaries of the said tract so approved and confirmed hereby are fixed and established to be: On the east the old pueblo of Chama; on the north the sierra or mountain of Las Grullas; on the south the sierra or mountain of Santa Clara; on the west the ascent to the Piedra Lumbre, situated in Rio Arriba County, Territory of New Mexico; excepting from the operation of this confirmation and decree such portions of the said tract which may be included in the exterior limits of the Plaza Colorado, Plaza Blanca, and the town of Abiquiu grants.

And it is ordered.

JOSEPH R. REED,
Chief Justice.

(Indorsed:) No. 140. Decree. Juan Jose Lovatto. Case No. 140. Filed Dec. 4, 1893. James H. Reeder, clk. By Ireneo L. Chaves, depy.

161 And be it further remembered that thereafter, to wit, on the 19th day of October, A. D. 1895, the same being the eleventh day of the October, 1895, term of said court, held at Santa Fe, in the Territory of New Mexico, the following among other proceedings were had, to wit:

162 In the U. S. Court of Private Land Claims.

JOSE YSABEL MARTINEZ ET AL., PLAINTIFFS,	} Case No. 140. J. J.
<i>vs.</i>	
UNITED STATES, DEFENDANT.	

Lobato grant.

Decree approving survey.

In the above-entitled cause the official survey made by Sherrard Coleman, deputy surveyor, for and as the act of the surveyor-general of the United States in and for the district of the Territory of New Mexico,

having come on regularly to be presented to this court for the approval and confirmation of said survey, the said survey being the same regularly returned to this court and on file, as made by said surveyor-general under his contract No. 285, and the protest and objections to the approval of said survey, heretofore filed by Messrs Catron and Speiss, representing certain persons dissatisfied therewith, having been formally and by written stipulation withdrawn, and there being no other objections made to the approval of said survey, and it appearing to the court that the same should be approved and confirmed:

Now, therefore, the premises all and singular being considered, the Government of the United States represented on and at said hearing by Summers Burkhart, esq., assistant United States attorney, and the plaintiffs herein being represented by Geo. Hill Howard, attorney for plaintiffs, it is, on motion of plaintiff's attorney,

Ordered, adjudged, and decreed hereby that said survey in this above-entitled cause of the said grant known as the Juan Jose Lobato is hereby approved and confirmed, and that patent issue for the said lands within said survey embraced, in accordance with the decree of confirmation of said grant heretofore in this case made and entered.

It is further ordered that the clerk of the court do endorse on the face of the map of said survey, for further identification, that the same has this day been by this court approved.

Done this (19) day of October, 1895.

(Signed)

JOSEPH R. REED,
Chief Justice.

And be it further remembered that thereafter, to wit, on the 30th day of November, A. D. 1896, there was filed in the office of the clerk a motion to amend the decree of the court, which motion is in words and figures following, to wit:

In the Court of Private Land Claims.

UNITED STATES OF AMERICA, ss:

JOSE Y. MARTINEZ ET AL.,
plaintiff,

vs.

THE UNITED STATES, DEFEND-
ant.

No. 48. Juan Jose Lobato grant.

Now comes the defendant in the above-entitled cause and shows to the court that the decree of confirmation heretofore entered in said cause, on December 4, 1893, does not express the judgment of the court in that, through accident or mistake the following clause is omitted at the end of the last sentence thereof, to wit:

"This decree of confirmation shall not and does not confer upon the original grantee, his heirs, assigns, and legal representatives, any right or title to any gold, silver, or quicksilver mines or minerals of the same situated in, upon, or within the premises hereinbefore described, all such mines and minerals remaining the property of the United States."

Defendant accordingly prays an order of this court nunc pro tunc correcting said omission and amending said decree by the addition of the clause aforesaid.

(Signed)

MATT G. REYNOLDS,
U. S. Attorney.

166 And be it further remembered that thereafter, to wit, on the 5th day of May, 1897, at the May term of said court, held at Santa Fe, in the Territory of New Mexico, the following order was made, viz:

JOSE ISABEL MARTINEZ ET AL.	}	No. 140. Juan Jose Lobato grant.
vs.		
UNITED STATES.		

This cause coming on to be heard on the motion of the defendant for an order nunc pro tunc amending, as hereinafter set forth, the decree heretofore, to wit, on December 4, 1893, entered in the above-entitled cause after notice of said motion duly given to the attorney of record of said claimants, and the court now being sufficiently advised in the premises, find that by accident or mistake the clause hereinafter set forth was omitted from said original decree and doth accordingly grant said motion in order that said decree may conform to the findings of the court in said cause, and the clerk is hereby ordered to enter as of the date of said original decree the following clause at the end of the last sentence of said decree:

This decree of confirmation shall not and does not confer upon the original grantee, his heirs, assigns, and legal representatives, any right or title to any gold, silver, or quicksilver mines or minerals of the same situated in, upon, or within the premises herein described, all such mines and minerals remaining the property of the United States.

167 In the Court of Private Land Claims.

JOSE ISABEL MARTINEZ ET AL.	}	No. 140. Juan Jose Lobato grant.
vs.		
UNITED STATES.		

It is stipulated between the parties that the claimants herein connected themselves on the hearing of said cause with the original grantee, Juan Jose Lobato, to an extent sufficient to invoke the jurisdiction of the court.

It is further stipulated that exhibits "F" to "W" (both inclusive) introduced by the claimants on the trial of said cause, solely for the purpose of showing such derivation of title, shall be omitted from the transcript made up on appeal in said cause.

It is further stipulated that the Spanish of plaintiff's exhibits "D" and "E" and of each and all of defendant's exhibits shall be omitted from said transcript.

This June 13, 1900.

G. HILL HOWARD,
Attorney for Plaintiffs.

MATT G. REYNOLDS,
U. S. Attorney, C. P. L. C.

(Indorsed:) No. 140. In the Court of Private Land Claims. Jose Isabel Martinez et al. vs. United States. Juan Jose Lobato gt. Stipulation. Filed in the office of the clerk Court of Private Land Claims, June 13, 1900. Jas. H. Reeder, clerk. By I. L. Chaves, deputy.

168 UNITED STATES OF AMERICA,
Territory of New Mexico:

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing 167 pages contain a full, true, and perfect transcript of all the papers, pleadings, record entries of proceedings, and evidence in the cause lately pending in said court, wherein Jose Isabel Martinez et al. were petitioners and the United States were defendant, except certain exhibits named in a stipulation of said parties filed in my office on the 13th day of June, 1900, which stipulation is included in this transcript; and I further certify that this transcript constitutes a full, true, and perfect record of the said cause, as shown by the records and files of my office.

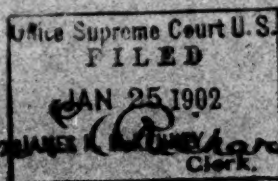
Witness my hand and the seal of said court, at Santa Fe, New Mexico, this thirtieth day of August, A. D. 1900.

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy*.

169 (Indorsement on cover:) File No. 17921. Court of Private Land Claims. Term No. 169. The United States, appellant, vs. Jose Isabel Martinez et al. Filed October 2d, 1900.



N^o. 169.



By *of Atty. General (Richard)*
Reynolds for *App.*

Filed Jan. 25, 1902.

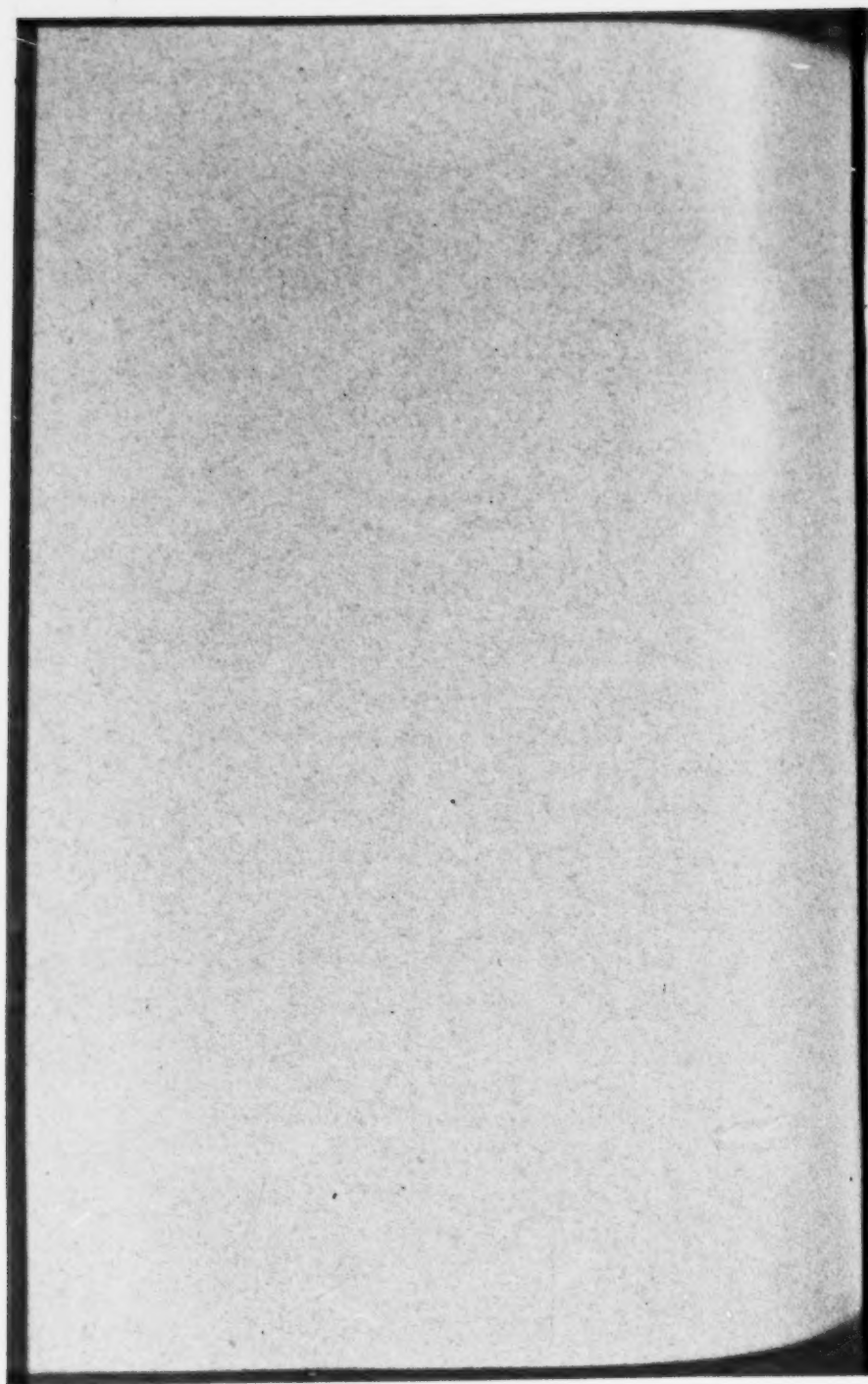
In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
JOSE ISABEL MARTINEZ ET AL. } No. 169.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.



In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,	} No. 169.
<i>v.</i>	
JOSE ISABEL MARTINEZ ET AL.	

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

The validity of the grant involved in this case is not now for consideration or determination. The sole question pertinent to this appeal relates to the propriety of the Court of Private Land Claims in rendering a money judgment under the circumstances against the United States in favor of the claimants for certain lands, at the rate of \$1.25 per acre, *included* within the boundaries of the grant as confirmed by the Court of Private Land Claims in the original proceeding, but which were subsequently found to have been previously sold and patented by the United States to various parties under its homestead laws.

There is involved the construction of three provisions of the act of Congress, approved March 3, 1891

(26 Stat. L., p. 854), creating and limiting the jurisdiction of the Court of Private Land Claims, which are as follows:

The petition shall set forth fully the nature of their claims to the lands, * * * the name or names of any person or persons in possession of or claiming the same, or any part thereof, otherwise than by the lease or permission of the petitioner; * * * and a copy of such petition, with a citation to any adverse possessor or claimant, shall, immediately after the filing of the same, be served on such possessor or claimant in the ordinary legal manner of serving such process in the proper State or Territory, etc. (Sec. 6.)

If in any such case a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for *so much land only* as such perfect title shall be found to cover, *always excepting any part of such land that shall have been disposed by the United States,*" etc. (Sec. 8.)

SEC. 14. That if in any case it shall appear that the lands or any part thereof decreed to any claimant under the provisions of this act shall have been sold or granted by the United States to any other person, such title from the United States to such other person shall remain valid, notwithstanding such decree, and upon proof being made to the satisfaction of said court of such sale or grant, and the value of the lands so sold or granted, such court shall render judgment in favor of such claimant against the United States for the reasonable value of said lands so sold or granted, exclusive of better-

ments, not exceeding one dollar and twenty-five cents per acre for such lands; and such judgment when found, shall be a charge on the Treasury of the United States.

This claim for \$2,320.91 as compensation for 1,856.73 acres of land lying within the limits of the Juan Jose Lobato grant, which had been disposed of and patented by the United States, grows out of the confirmation of that grant by the Court of Private Land Claims, and a résumé of the proceedings leading up to its confirmation and subsequent survey and patent is necessary.

On February 28, 1893, the present appellees, with the exception of George Hill Howard, claiming to be the heirs at law and legal representatives of Juan Jose Lobato, filed their petition (R., 21-22) in the Court of Private Land Claims for the confirmation of the grant which they alleged had been made to Juan Jose Lobato on August 24, 1740, juridical possession given, and the grant ratified and confirmed by the proper authorities on June 15, 1744. They also alleged that the same tract had been previously granted to Cristoval Torres, but that his grant had been revoked in 1733 and the tract declared to be crown lands; that from the date of the grant to Lobato in 1740 and for a period of one hundred and fifty-three years (down to the time of the filing of the petition), he and his legal representative had been in the *peaceable adverse possession* of the same.

Proceedings before the surveyor-general of New Mexico in 1884, not now material, are set out in the

petition, which also contains other allegations of no relevancy now.

There is, however, one paragraph of this petition which becomes quite pertinent now, to wit, paragraph 11, which is as follows:

That there are no adverse holders, possessors, or claimants of or to any portion of said tract, and that the same does not conflict in whole or in part with any claim derived from the Spanish or Mexican Government. (R., 22.)

Subsequently, on October 16, 1893, a supplemental petition (R., 25, 26) by the same claimants was filed, which recited the filing of their original petition, and that Juan Torres and Jesus Torres, as the legal representatives of Cristoval Torres, had filed a petition before the Court of Private Land Claims, praying a confirmation of the grant made to Cristoval Torres on June 9, 1724 (heretofore mentioned), which said grant was in conflict with the grant to Lobato; that the grant to Torres in 1724 had been forfeited (which view the court also adopted), and reasserted the making of a grant of the same lands to Juan Jose Lobato in 1740, and the proceedings in relation to it.

It further generally reaffirmed all the allegations and statements contained in the original petition and denied each and every allegation, averment, and statement in the petition of the Torreses which was in conflict with the original petition, renewed the prayer of their original petition, and asked that the two Torreses be made parties to this proceeding.

The answer of the United States (R., 26, 27) was filed on November 20, 1893, and in a general way asserted its ignorance of a grant of a tract of land to the predecessors in interest of the plaintiffs, as to their succession in interest to the original grantee, as to the grant to Juan Jose Lobato in 1740, and the giving of juridical possession as claimed; but it said that if such possession had been given, continuous and undisputed possession had not been maintained, and in other ways denied the validity of the grant and asked for its rejection.

The case proceeded to trial, and on the trial the Government introduced in evidence the title papers of three other grants, to wit, the Plaza Colorado (R., 57-65), Plaza Blanca (R., 66, 67), and town of Abiquiu (R., 67, 78), which showed them to be in conflict with the Juan Jose Lobato grant.

On December 4, 1893, the court entered its decree (R., 79, 80) confirming the grant as a complete and perfect one to the heirs, assigns, and legal representatives of Juan Jose Lobato, adopting the boundaries as alleged in the petition and sustaining its material allegations, except that to the effect that the original grantee and his successors in interest had been in the actual use and occupation of that portion of the grant which was included within the exterior limits of the Plaza Colorado, Plaza Blanca, and town of Abiquiu grants, and these portions were excluded from the operation of the decree. In all other respects the material allegations of the petition were substantially conformed to in the

decree, and that portion of the grant included within these three other grants was the only part of the Juan Jose Lobato grant, as claimed by the petitioners, which was not confirmed to them.

Then the grant went to survey, and on October 19, 1895 (R., 80, 81), the court entered its order approving the survey in accordance with its previous decree of confirmations, and directed that patent issue for the tract therein confirmed, which has since issued to the confirmees.

Subsequently (R., 81, 82) the original decree of confirmation was amended to the extent that a paragraph was inserted therein excepting from its operation any mineral rights to gold, silver, or quicksilver, as provided by the creative act of March 3, 1891.

Nowhere in all these proceedings did the plaintiffs mention the fact, nor was it shown by anyone, that any portion of the lands ultimately confirmed by the court, the boundaries of and exclusions from which were specifically stated in the decree, had been heretofore disposed of and patented by the United States to other persons. The first intimation of such a condition comes seven years after the entry of the final decree of confirmation, and five years after the order approving the survey and directing the issue of the patent, and, notwithstanding their own allegations in paragraph 11 of the petition, to the effect "*that there are no adverse holders, possessors, or claimants of or to any portion of said tract,*" and in the face of the condition precedent to a confirmation imposed by section 6 of the act creating the

court and giving claimants, under the terms and conditions and absolute restrictions of the act, the opportunity to sue the United States, which section required that every "petition shall set forth fully * * * the name or names of any person or persons in possession of or claiming the same (lands), or any part thereof, otherwise than by the lease or permission of the petitioner * * * and a copy of such petition, with a citation to any adverse possessor or claimant, shall, immediately after the filing of the same, be served on such possessor or claimant in the ordinary legal manner of serving such process in the proper State or Territory," etc.

On April 23, 1900, the claimants in the original proceeding for the confirmation of the grant, and G. Hill Howard, claiming an interest therein by virtue of a conveyance from the original petitioners since the date of the decree of confirmation, filed their petition in the Court of Private Land Claims, the material allegations of which are briefly as follows (R., 1, 2):

That the Court of Private Land Claims on December 4, 1893, confirmed unto José Ysabel Martinez and his copetitioners (the appellees with the exception of Howard) the Juan Jose Lobato grant as a complete, perfect, and subsistent grant; and that afterwards an official survey of the same was made and approved by the court.

That certain parcels of land included therein, designated in Exhibit A, filed therewith (R., 4, 5), aggregating 2,056 acres, were so disposed of, granted, and patented by the United States and to the persons as

in said exhibit set forth; that the value of the same is over \$1.25 per acre, they being the most valuable parts of the said grant, for the reason that they contain flowing waters for irrigation and springs for the watering of stock, and that the whole thereof is worth more than \$1.25 per acre for stock purposes alone.

The petition closes with a prayer that the court may render judgment against the United States in favor of the petitioners for the value of the lands so patented, the same to be a charge upon the Treasury of the United States, one half in favor of George Hill Howard and the other half in favor of Jose Isabel Martinez for himself and in trust for his said coconfirmees of the said grant, or in favor of said Howard directly, or in his favor for himself and in trust for the said Jose Isabel Martinez and in trust for him and his said coconfirmees, their heirs and assigns.

On April 26, 1900, the United States filed its answer (R., 6, 7), which admitted the confirmation of the Juan Jose Lobato grant, but asserted that it was confirmed to Juan Jose Lobato, his heirs, assigns, and legal representatives, and that the decree so stated; it also admitted the survey and approval of the same by the court, but asserted that it was in due time transmitted to the Commissioner of the General Land Office, as provided by law, and was not within the control or jurisdiction of the court.

It alleged ignorance as to the conveyance of an interest in the grant to Howard and as to the disposition of the lands claimed to have been disposed of and patented by the United States.

It did assert, however, that the petition of the claimants in the original proceeding for the confirmation of the grant contained the allegation, "that there are no adverse holders, possessors, or claimants of or to any portion of said tract, and that the same does not conflict in whole or in part with any claim derived from the Spanish or Mexican Government."

And further, that said plaintiffs in said suit failed and neglected to make holders of said alleged claims and patents parties defendant to said suit, as required by law, but proceeded to try said cause, obtained a decree of confirmation against the United States, which has long since become final, and upon which said final decree the official survey, as provided by law, has been made, completed, and approved by that court upon the application and at the instance of the plaintiffs in said original cause and the said George Hill Howard, their attorney of record; and that said George Hill Howard was at and during all times the attorney of record for and on behalf of the plaintiffs in said cause, and had the management and control of the same, and still has, and was presumedly conversant with all the forms of procedure and proceedings and requirements of law in the premises. That by reason of the failure of said original plaintiffs and of their attorney, George Hill Howard, to make all adverse claimants and holders of patents, as alleged in this petition, parties defendant; and by reason of the allegations and disclaimer contained in the original petition, in paragraph 11, aforesaid, they thereby waived and disclaimed all right, if any they

had, to challenge any disposition theretofore made under the laws of the United States to (of) any portion of said grant.

Further answering, the defendant, the United States, says the petitioners ought not to have or maintain their said petition, for that no claim was made in said original suit for any wrongful disposition made by the United States, if any, of any portion thereof, under the public land laws, and therefore abandoned the same and permitted and induced a confirmation (of the same) without regard to any such wrongful disposition by the United States, and prosecuted the same to final judgment, approval of the official survey, and the certification thereof to the Commissioner of the General Land Office for patent, which said patent is ready to be issued and delivered upon the payment of one half of the costs and charges incurred in that behalf, as provided by law.

Wherefore, the defendant prayed the petitioners should not have or maintain their petition and that the same should be denied and dismissed. (R., 7.)

On April 26, 1900, the plaintiffs filed a general demurrer (R., 9) to the Government's answer, accompanied by an affidavit of George Hill Howard (R., 8), which was to the effect that he had been at all times the solicitor of the plaintiffs and that they and he, until after the survey of said grant, did not and could not know or certainly allege and affirm that the lands granted and disposed of by the United States as set forth and shown in their petition were within the

exterior limits of their said grant, and consequently no allegation in relation thereto was made in their original petition; that such knowledge only came to the deponent within the last two years, and contained other matter of no significance now.

On May 10, 1900, the court sustained the plaintiffs' demurrer to the answer of the United States (R., 10); whereupon the court proceeded to consider the petition upon an agreed statement of facts (R., 10-12), which was substantially that the United States had disposed of lands aggregating 1,856.73 acres within the limits of the Juan Jose Lobato grant as the same was finally confirmed by the court, specifying the portions so disposed of, and that the said grant was finally approved and confirmed by the Court of Private Land Claims as a valid, perfect, and subsistent grant on December 4, 1893; that the value of said lands so disposed of was \$1.25 per acre; that none of the patentees and adverse possessors thereof were parties to the original suit for confirmation of the grant, nor served with copy of the petition and citation, nor were present in court; that the entire proceedings and record in the original cause are a part of the record in this proceeding.

On May 11, 1900, the court decided the matter against the United States, and rendered a judgment against it for \$2,320.91 in accordance with the prayer of the petition. The decree and majority (three) opinion of the court are found on pages 12 to 16 of the record. The dissenting opinion of Mr. Justice

Sluss, sustaining the Government's contentions, which is concurred in by Mr. Justice Murray, is found on pages 16 to 18 of the record.

ARGUMENT.

The original proceedings out of which the present claim for indemnity grew, was a suit by the present appellees, except Howard, against the United States in the Court of Private Land Claims under the provisions of the act of March 3, 1891 (26 Stat. L., p. 854), for the confirmation of the Juan Jose Lobato land grant, resulting in a decree in favor of the claimants (appellees), confirming the same and finding the title complete and perfect at the date of the cession by the treaty of Guadalupe Hidalgo (1848) (R., 79, 80). From this decree no appeal was prosecuted, and, becoming final, it was executed by survey, approval, and the land patented to the confirmees.

It now appears that portions of the land included within the limits of this grant, as confirmed, had been patented to other persons under the homestead laws of the United States, and the confirmees are seeking to recover the indemnity provided in the fourteenth section of the private land claim act. The question most pertinently suggested is, Have they brought themselves within the requirements of the act entitling them to demand and receive indemnity?

The appellees have received a patent to the identical land which the United States had prior to their suit conveyed by patent under the homestead laws to others, and two patents upon the same land are now

outstanding. The Juan Jose Lobato grant was held by complete and perfect title at the date of the cession and was asserted and confirmed under the provisions of the eighth section of the act. This title did not need the aid of the United States to be evidenced by a patent upon a decree of confirmation by the Court of Private Land Claims. However, the holders of perfect titles were given permission *upon terms*, to take a confirmation and patent by applying to the court. They were also at liberty, without sacrifice or prejudice to their title, to decline the forum. (*Ainsa v. New Mexico and Arizona R. R.*, 175 U. S., 76, 90).

Imperfect titles needing the aid and recognition of the Government were required to apply to the court within two years from the taking effect of the act (March 3, 1891), or have the bar of the statute erected against them (section 12). With this character of title we are not concerned in this proceeding.

By permitting the United States to be sued, it was perfectly competent for Congress to prescribe the procedure and name the terms and conditions upon which decrees might be entered against the United States, and, as well, define the legal effect of the same. If such jurisdiction was availed of by claimants under perfect titles, they thereby consented to have the conditions imposed upon them, however onerous.

Claimants, upon applying to the court under section 8 of the act, were required to conform to all the provisions of the act and were subject to the same restric-

tions as to procedure as in all other cases. The first paragraph of that section provides:

That any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican Government that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases of confirmation of such title; and on such application said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location, and boundaries, in the same manner and with the same powers as in other cases in this act mentioned.

Referring to section 6, it is provided that in addition to suing the United States, the claimants shall be required to sue also "any person or persons in possession of or claiming the same or any part thereof otherwise than by lease or permission of the petitioner," and to that end it is required that "a copy of such petition, with a citation to any adverse possessors or claimants, shall, immediately after the filing of the same, be served on such possessor or claimant in the ordinary legal manner of serving such process in the proper State or Territory, and in like manner on the attorney for the United States," and such adverse claimants and the United States shall plead, answer, or demur, in default of which the court shall proceed to hear the cause on the petition and proofs presented, but no decree

shall be rendered except upon full legal proof and hearing.

These provisions apply to all claims filed before the court, whether perfect or imperfect. They are specific and mandatory provisions and have been so construed by the Court of Private Land Claims in many cases until now.

The eighth section further provides, as a condition upon which claimants under perfect titles will be given a decree:

If in any such case, a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land *only* as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States (and always subject to and not to affect any conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title). And no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States; and no private right of any person, as between himself and other claimants or persons, in respect of any such lands, shall be in any manner affected thereby.

It now appears that claimants have not submitted to these requirements, but by their own acts and allegations have induced a confirmation and patent without mention of the existence of these adverse patents, and

without having made the vendees of the United States parties to their proceedings, as required in all cases prosecuted under the act; but they have induced a confirmation and patent of their grant without excepting the very lands for which a money judgment by way of indemnity is now asked.

It would have been improper to award judgment for indemnity in the original decree without first bringing in by process the vendees of the United States and requiring them to produce their titles, so that the court might ascertain their boundaries, quantity, and value, and decree as is provided by the eighth and fourteenth sections.

United States v. Moore, 12 How., 209.

United States v. Castant, Ibid., 437.

United States v. Davenport, 15 How., 1, 8.

United States v. Roselius, Ibid., 30.

Whether the claimants' patent is better than that of the homesteaders is not an issue here; the question is, are they entitled to a money judgment against the United States under the fourteenth section of the act. They made no claim for it in their original suit nor at any time prior to the final approval of the survey by the court; they did not state what lands the United States had disposed of to others within the grant, nor who were the vendees; neither did they make them parties. (*United States v. Roselius*, *supra*.)

The power to award an indemnity is an incident to the case where jurisdiction exists to decree that the lands claimed were held by perfect title, and except

therefrom such portions as had been disposed of by the United States and direct that patent shall issue for that portion only which is not covered by the excepted lands, and then direct inquiry as to the value of such excepted lands in order that judgment may be entered under the provisions of section 14. The right to maintain the claim for indemnity must arise upon the record and "the facts on which relief is to be had under that section (14) must be made to appear as a part of the case and before the court has ceased to have jurisdiction over the land which is the subject of the case." (Dissenting opinion of Mr. Justice Sluss, R., 16.)

The case at bar stands as a claim made for indemnity after the court has awarded them all they demanded and which they have sanctioned by accepting the confirmation and survey and patent. The jurisdiction was foreclosed when claimants induced the decree and accepted the survey and certification to the Commissioner of the General Land Office for issuance of patent. The claim should have been made in the original petition. (*Real de Dolores del Oro v. United States*, 175 U. S., 71, 75.)

The indemnity provided in section 14 of the act of 1891 is in *pari materia* with the eleventh section of the act of May 26, 1824 (4 Stats., p. 52), which is as follows:

SEC. 11. That if in any case it should so happen that the lands, tenements, or hereditaments decreed to claimant under the provisions of this act shall have been sold by the

United States or otherwise disposed of, or if the same shall not have been heretofore located, in each and every such case it shall and may be lawful for the party interested to enter, after the same shall have been offered at public sale, the like quantity of land, in parcels, conformable to sectional divisions and subdivisions, in any land office in the State of Missouri; and if it should so happen that in making such entries there should remain in the hands of the enterer a fractional excess of acres of less number than the smallest sectional divisions authorized by law to be sold, it shall and may be lawful for the party interested to enter, in virtue of such fractional excess, the quantity of one-half quarter section upon paying one dollar and twenty-five cents for each acre contained in such half quarter section over and above the fractional excess to which he may be entitled by such confirmation.

That section of the act of 1824 and the proper procedure to obtain the indemnity have received the repeated consideration of this court in the following cases:

United States v. Moore, 12 How., 209, 223.

United States v. Costant, *ibid.*, 437.

United States v. Roselius, 15 How., 30, 33-35.

United States v. Davenport, 15 How., 1, 8-9.

The whole theory of indemnity under private land claim acts is that neither land scrip nor money indemnity could properly be decreed except where the vendees of the Government were made parties. It was said in the *Moore* case:

The purpose of Congress was, first, to authorize a suit against the United States, and, in the next place, to give judicial cognizance of a description of incipient claims having no standing in a court of justice before the act (1824) was passed; and thirdly, that the petitioner should be bound to sue private persons claiming the same land, so that those having an interest and a better knowledge of facts and more capacity to defend than the United States might be drawn into the contest; and that they should be compelled to produce their titles, so that if a decree was made for complainant the court could ascertain what part of the land should be granted to him by patent; and as this could only be done by specific ascertainment of interfering claims, the decree must of necessity specify their boundaries and quantity. Nor can it stop here; it must adjudge that a warrant shall issue and be the subject of location. (12 How., 223.)

Although the act of 1824 applied only to imperfect grants, still the analogy between it and that of 1891 is so close, and standing in *pari materia*, the procedure provided seems to be identical as to all adverse possessors and claimants, especially the vendees of the United States, that the cases cited are forcibly in point.

When claimants entered the Court of Private Land Claims they were compelled to proceed in the same manner as claimants under imperfect titles and were no better circumstanced. They agreed to the impositions of the burdens of the act in order to secure a patent,

upon a decree of confirmation, and accept in lieu thereof the indemnity provided by section 14; but it was incumbent upon them to make claim at the proper time for it and bring in all adverse possessors and claimants, especially the vendees of the United States, whose titles to the United States were under obligations to protect against any further encroachments by the action of any department or tribunal presuming to act upon the same by delegation from the political branch of the Government.

It is respectfully submitted the judgment should be reversed and the application or petition dismissed.

JOHN K. RICHARDS,

Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney-General.

O

No. 169.

By of Howard & Earle for

Office Supreme Court U. S.
FILED
JAN 30 1902
JAMES H. McKENNEY,
Clerk.

Appellees.
In the Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Jan. 30, 1902.

THE UNITED STATES, APPELLANT,
v.
JOSE ISABEL MARTINEZ, ET AL. } No. 169.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE APPELLEES.

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1902.

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THE UNITED STATES, APPELLANT,	} No. 169.
<i>v.</i>	
JOSE ISABEL MARTINEZ ET AL.	

*APPEAL FROM THE COURT OF PRIVATE LAND
CLAIMS.*

Brief on Behalf of the Appellees.

Statement.

This appeal on behalf of the United States is from the decision of the Court of Private Land Claims, granting a decree in favor of the appellees for a money judgment against the United States on account of patents granted by it to 1,856.73 acres of land within a grant, the title to which, in the appellees, said Court had previously confirmed.

The only question for consideration is the right of the Court to render the said judgment.

The entire grant in question was complete and perfect at the date of the treaty of cession, and therefore the title and ownership of the property were vested absolutely in the grantees of the former government, and the appellees were the owners of the property in whole or in part.

Argument.

Congress, in giving the privilege to sue the United States, did not by the act attempt, or intend, to limit the rights of the individual whose land had been sold by the United States to the technical narrow confines suggested by counsel for the appellant, and the fact that in this case it was, as shown, necessary to dispose of the contention set forth in the original case, involving the boundaries and limits of the grant, before the present question could have been discovered, must relieve the claimant from a failure to have alleged that which required the functions of the Court and the United States Survey Office to determine. The defense of the appellee is based on the contention that the very parties whom the Court has held was entitled to the property within the limits and terms of the decree, were justly divested by the United States of a portion of their property, because of a failure to discover such fact when the suit was instituted, to establish their title.

At no time could the patentees whose title was derived from the United States, have been compelled to protect their title; in fact the service on them of a copy of the appellee's petition with a citation, would have been useless. They were not, nor could they have been affected by the decree, being, as they were, fully protected by the 14th Section

of the Act creating the Court of Private Land Claims. The effect of the decree of the Court was not alone to establish the grant therein described but to confirm the title of the vendees of the United States within the boundaries established, thereby divesting the claimants of all rights to valuable property included within their grant, a money judgment for which was fairly contemplated by the 14th Section of the said act.

In cases of this nature this Court has held (*U. S. vs. Moore*) that it is "called on to decide according to the rules governing a Court of Equity."

The subject of laches is disposed of completely (see deposition of G. Hill Howard, Record, p. 8), and it is submitted that no rule of equity can be advanced to support the contention of the appellee that the claimants have under the facts been precluded from recovery for land of which they have been divested by the act of United States in granting patents to other parties.

The analogy of this case to the theory of indemnity, as expressed in the case of the *U. S. vs. Moore*, 12 How., 209, 223, is faint beyond recognition, in the *Moore* case the obscurity and antiquity of the transaction required the Court to bar the complaint on legal presumption founded on lapse of time; and had the claimant made the vendees parties to this action for the reason cited in the case of *U. S. vs. Moore*, referred to in brief of appellee, p. 19, it could have availed nothing for they were not and could not have been affected by the judgment, and, therefore, were not necessary parties.

Further, the necessity cited by the Court for making the *U. S.* vendees parties in the case of *U. S. vs. Moore*, p. 223, does not even exist in the case at bar for the reason that the title is not in dispute (as in the *Moore* case), to the contrary, the

title of the United States vendees is expressly confirmed by the decree and the Eighth Sec. of the Act, creating the Land Court, the sole question here being the right of the claimants to a money judgment for the property of which they have been by the United States divested.

It is respectfully submitted that the judgment rendered by the Court of Private Land Claims in this case should be confirmed.

G. HILL HOWARD,
HENRY M. EARLE,
Counsel for Appellees.

Supreme Court of the United States.

No. 169.—OCTOBER TERM, 1901.

The United States, Appellant, } Appeal from the Court of Private Land
vs. } Claims.
José Isabel Martinez et al. }

[March 3, 1902.]

This was a petition, under the fourteenth section of the Court of Private Land Claims Act, for a money judgment against the United States for lands within a Spanish land claim, which lands had been patented by the United States to third parties before the Spanish land grant had been acted upon or confirmed.

The original proceeding, out of which the present claim for indemnity grew, was a suit begun February 28, 1893, by the present appellees, who, with one exception, claimed to be the heirs at law and legal representatives of Juan José Lobato, against the United States, in the Court of Private Land Claims, for the confirmation of a grant alleged to have been made to Lobato August 24, 1740, of which juridical possession was given, and the grant ratified and confirmed by the proper authorities June 15, 1744. In their petition it was alleged that the same tract had been previously granted to Cristobal de Torres, but that his grant had been revoked in 1733 and the tract declared to be crown lands; that from the date of the grant to Lobato in 1740 and for a period of 153 years, (down to the time of filing the petition,) he and his legal representatives had been in peaceable adverse possession of the same, and that "there are no adverse holders, possessors or claimants of or to any portion of said tract." The suit resulted in a decree in favor of the claimants (appellees) confirming the grant, and finding the title complete and perfect in the claimants, at the date of the cession by the treaty of Guadalupe Hidalgo. The decree fixed the boundaries of the tract as shown in a map annexed to the petition. From this decree no appeal was prosecuted, and becoming final, it was executed by a survey approved by the court, and the land patented to the grantees.

More than six years after the confirmation of the Lobato grant the petitioners filed the present petition, alleging that several parcels of land, amounting to 2,056 acres in the aggregate, had been disposed of, granted and patented by the United States to certain persons named in an exhibit to the petition; that the lands so granted lay wholly within the boundaries of the Lobato grant as confirmed, and were among the most

valuable parts of such grant. The petition concluded with a prayer for judgment against the United States for the value of the lands so patented.

The United States answered, admitting the confirmation of the Lobato grant, and averring that the plaintiffs neglected to make the holders of the patented land parties defendant to the suit as required by law, but that they proceeded to try their cause, obtain a decree of confirmation, which had long since become final; and that by failure to make the patentees parties defendant, and by averring that there were no adverse claimants to any portion of the tract, "they thereby waived and disclaimed all right, if any they had, to challenge any disposition theretofore made under the laws of the United States to any portion of said grant."

The petitioners filed a general demurrer to this answer, accompanied by an affidavit to the effect that the plaintiffs, until the survey of said grant, did not and could not know or certainly allege and affirm that the lands granted and disposed of by the United States, as set forth in their petition, were within the exterior limits of their grant, and consequently no allegation with relation thereto was made in their original petition, and that such knowledge only came to the petitioners within the last two years.

The demurrer to the answer was sustained, the case submitted upon an agreed statement of facts, and a judgment rendered against the United States for \$2,320,91, for 1,856.73 acres, at \$1.25 per acre, in accordance with the prayer of the petition—Justices Sluss and Murray dissenting.

Mr. Justice Brown delivered the opinion of the Court.

This case raises the question whether, after a land grant has been confirmed by the Court of Private Land Claims, that court may, after an unexplained delay of over six years, entertain a supplemental petition for the value of certain parcels disposed of and patented by the United States to third parties, before the filing of the original petition.

The following sections of the Court of Private Land Claims Act (26 Stat. 854) are pertinent in this connection:

"SEC. 6. That it shall and may be lawful for any person . . . claiming lands within the limits of the territory derived by the United States from the Republic of Mexico . . . by virtue of any such Spanish or Mexican grant . . . which . . . have not been confirmed by act of Congress, . . . and which are not already complete and perfect, in every such case to present a petition, in writing, to the said court," &c. . . .

"The petition shall set forth fully the nature of their claims to the lands, . . . the name or names of any person or persons in possession of or claiming the same, or any part thereof, otherwise than by the lease or permission of the petitioner; . . . and a copy of such petition, with a citation to any adverse possessor or claimant, shall, immediately after the filing of the same, be served on such possessor or claimant in the ordi-

nary legal manner of serving such process in the proper State or Territory," &c.

"SEC. 8. That any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican Government *that was complete and perfect* at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases of confirmation of such title.

* * * * *

"8. If in any such case a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for *so much land only* as such perfect title shall be found to cover, *always excepting any part of such land that shall have been disposed by the United States,*" &c.

"SEC. 14. That if in any case it shall appear that the lands or any part thereof decreed to any claimant under the provisions of this act shall have been sold or granted by the United States to any other person, *such title from the United States to such other person shall remain valid, notwithstanding such decree*, and upon proof being made to the satisfaction of said court of such sale or grant, and the value of the lands so sold or granted, such court shall render judgment in favor of such claimant against the United States for the reasonable value of said lands so sold or granted, exclusive of betterments, not exceeding one dollar and twenty-five cents per acre for such lands; and such judgment, when found, shall be a charge on the Treasury of the United States."

Under these sections the holder of a complete and perfect title may resort to either of two remedies: he may bring suit in the local courts upon his title against any one in possession of the land covered by the grant, or any portion of it, (*United States v. Pellerin*, 13 How. 9; *Ainsa v. New Mexico R. R. Co.*, 175 U. S. 76, 90;) or, he may file his petition in the Court of Private Land Claims under section 8, subject to the condition, that the "confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States." In such case, however, while he affirms the title of the patentee of the United States he may, under section 14, if "it shall appear that the lands or any part thereof decreed to any claimant . . . shall have been sold or granted by the United States to any other person," recover a money judgment against the United States "for the reasonable value of said lands so sold or granted."

As the petitioners in this case elected the latter remedy they are entitled to a recourse against the United States to recover the value of the land patented, unless they have in some way estopped themselves to make the claim at this time. The argument of the Government in this connection is that, under section 6, the petitioners were bound to set forth in their original petition "the name or names of any person or persons in possession of or claiming the same, or any part thereof, otherwise than by the lease or permission of the petitioners," and that "a copy of such petition,

with citation to any adverse possessor or claimant, shall, immediately after the filing of the same, be served upon such possessor or claimant in the ordinary legal manner," &c., whose duty it shall be to enter an appearance and plead, answer or demur to said petition; in default of which the court is at liberty to proceed to hear the case upon the petition and proofs presented. Apparently, however, the only object of requiring notice to be given the adverse possessors or claimants is to compel them to show the location and boundaries of their claims and that they are not mere squatters or trespassers, but hold the land under a grant from the United States, in which case, under section 14, such title from the United States to such other person "shall remain valid notwithstanding such decree." If, however, it appear, as it does in this case, that the petitioners admit that the adverse possessors or claimants do hold under grants from the United States, and there are no disputed boundaries, there would appear to be no substantial reason for making them parties, inasmuch as they could not be affected by the decree. The only consequence of an omission to serve on them a copy of the petition is an acknowledgment of their title and of its boundaries.

The Government could doubtless exonerate itself from payment by showing that it had never granted or disposed of the lands; but no attempt of that kind was made, and the proof that the lands were entered under the homestead laws and subsequently patented comes from the land office at Santa Fé, as well as by the express stipulation of the parties. It is true that in *United States v. Moore*, (12 How. 209, 223,) it was said with regard to a similar act that persons holding under patents from the United States "should be compelled to produce their title, so that, if a decree was made for complainant, the court could ascertain what part of the land should be granted to him by patent; and as this could only be done by a specific ascertainment of interfering claims, the decree must of necessity specify their boundaries and quantities." But where, as in this case, the quantities and boundaries of the lands patented or otherwise disposed of are expressly stipulated between the United States and the claimants of the land grant, and the rights of the entrymen cannot be affected by the decree, we see no occasion for making them parties.

The second objection is that the language of section fourteen, "that if in any case it shall appear that the lands or any part thereof . . . shall have been sold or granted," limits the recovery of the value of such lands to cases wherein it appears in the original petition for confirmation that such lands have been granted, and that the original petition in this case having gone to a decree affirming the survey, the court lost control of the grant; and in addition thereto that the petitioners had, by the lapse of six years, waived and abandoned their claim, and are guilty of inexcusable laches. The original petition for confirmation was filed February

28, 1893, the decree of confirmation pronounced December 4, 1893, and the decree approving the survey October 19, 1895. The present petition for the value of the lands granted was filed April 23, 1900, over seven years after the original petition was filed, and over four years from the time of the decree approving the survey. While section fourteen evidently contemplates that the names of the adverse holders shall be set forth in the original petition, that notice shall be given them and that the claim for a money judgment for the lands granted them, shall be incorporated therein, we should not refuse relief solely upon that ground, if sufficient excuse were shown for the omission to make these grantees parties; since it might well be that, if the grant were a large one and its boundaries indefinite or unsettled, entries might inadvertently be made within the exterior limits of such grant and patents issued therefor in good faith and without the knowledge of the original grantee. In such event the right to reimbursement ought not to be denied, if due diligence to ascertain the facts were exercised at the time the petition for confirmation was filed.

But we are unwilling to admit that a claimant may wait an unlimited time and then, upon a simple allegation that certain lands within the grant had been disposed of, may recover their value. We think the claimant is bound to act with promptness, and if a long delay has occurred, to explain it by proper averments. The original petition for confirmation in this case not only suggested no adverse claimants, but alleged positively that "there are no adverse holders, possessors, or claimants of or to any portion of said tract," when a simple reference to the records of the land office at Santa Fé would have shown the facts stated in Exhibit A annexed to the petition in this case, that fifteen homesteads had been entered upon this tract before the original petition was filed, in all but five of which patents had already issued. Not the slightest effort appears to have been made to ascertain these facts, and it was not until more than seven years thereafter that the petition in this case was filed. The petition sets forth that several parcels of land, aggregating 2,056 acres, within the Lobato grant, were disposed of by the United States to other parties, but there is no allegation explaining why these grantees were not made parties to the original petition, or why the long delay occurred in making the claim for a money judgment.

The answer of the United States sets up the failure of the petitioners to make the patentees parties to the original petition, and alleges that they thereby waived and disclaimed all right to a money judgment. Upon the same day this answer was filed, April 26, 1900, a demurrer thereto was filed, together with a deposition or affidavit setting up the fact that "prior and up to the survey of said grant, under the decree of confirmation," nei-

ther the original claimants nor their solicitor "knew or could know, or certainly allege and affirm, that the lands granted and disposed of by the United States as set forth and shown in the above said petition were within the exterior limits of the said Lebato grant," and that the facts were not ascertained "until within the past two years." How this affidavit came upon the record is not shown. No order was made permitting it to be filed. No reference to it or to the allegations it contains was made in the stipulation or agreed statement of facts upon which the case was tried, nor in the finding of facts incorporated in the decree of the court. For aught that appears, it was thrust upon the files without authority. But even if the affidavit were treated as a proper part of the record, it fails to show the slightest diligence to ascertain the real facts, although a map annexed to the original petition exhibited the claimed boundaries of the tract, and a reference to the records of the land office would have shown the description of each parcel entered as a homestead. Indeed it virtually confesses a neglect to file the petition for two years after the facts came to the knowledge of the petitioners.

The case then comes to this: Whether upon a petition for value filed seven years after the original petition for confirmation, a decree against the United States can be entered upon a simple allegation that certain parcels had been conveyed and patented by the United States, without showing some excuse for the delay in presenting the petition, or some diligence in ascertaining the real facts. Under the Court of Claims Act petitions must be presented to that court within six years from the time the cause of action accrues, (24 Stat. 505,) and while there is no limitation of the time for petitions of this character to be filed in the Court of Private Land Claims, we have held that a similar act required that cases should be heard and disposed of upon equitable principles, and that we were "bound to give due weight to lapse of time." (*United States v. Moore*, 12 How. 209, 222; *Indiana v. Kentucky*, 136 U. S. 479, 509, 510.) We think there has been such unexplained delay in this case as to justify the court in holding that petitioners had abandoned their claim for a pecuniary judgment.

The decree of the Court of Private Land Claims is therefore *reversed*, and the case remanded to that court for further proceedings not inconsistent with this opinion.

Mr. Justice HARLAN and Mr. Justice GRAY did not sit in this case.

True copy.

Test:

Clerk Supreme Court, U. S.